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# INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE

## VIOLENCE AGAINST WOMEN

Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1997/44

Addendum

Report on the mission to Cuba

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# I. INTRODUCTION

1. At the invitation of the Government of Cuba in a letter dated 17 August 1998, the Special Rapporteur on violence against women visited Cuba from 7 to 12 June 1999 to study the situation of violence against women and its causes and consequences.

2. The Special Rapporteur would like to express her appreciation for the cooperation and assistance extended to her by the Government of Cuba, and in particular by Ms. Vilma Espin Guillois, Chairwoman of the Federation of Cuban Women (Federacion de Mujeres Cubanas) and her collaborators, which enabled the Special Rapporteur to meet with government officials at the highest level, as well as to visit provincial authorities in Villa Clara and in Pinar del Rio. The Special Rapporteur was also able to meet with some sectors of civil society and to visit a women's prison in Havana, as well as a rehabilitation centre for former sex workers.

3. The Special Rapporteur is especially grateful for the efficient cooperation and support provided by Mr. Ariel Français, United Nations Resident Coordinator and UNDP Resident Representative in Havana, as well as Mr. Jorge Chediek, Deputy Resident Representative and Ms. Sara Almer, Programme Officer at UNDP Havana, in ensuring a substantively and logistically successful visit.

4. The Special Rapporteur met with President Fidel Castro, the newly appointed Minister for Foreign Affairs and the Vice-Minister for Foreign Affairs, as well as the Minister for Justice, the Minister and Vice-Minister for Public Health, the Minister for Science, Technology and the Environment, and the Vice-Minister for Labour and Social Security. The Special Rapporteur also met with the Attorney-General, the Chief Justice of the People's Supreme Court, the President of the National Assembly of People's Power and the Deputy Director of the Cuban Revolutionary Police. In Villa Clara and in Pinar del Rio, the Special Rapporteur had meetings with representatives of the provincial government, members of the People's Provincial Council and members of the provincial chapters of the Cuba Women's Federation. In addition, during her visit, the Special Rapporteur met with representatives of trade unions, social workers and social prevention workers, members of the National Union of Jurists, the National Union of Writers and Artists and the National Union of Journalists, as well as with academics and researchers.

5. The Special Rapporteur was able to obtain information and documentation to report to the Commission on Human Rights on government policies and strategies relating to the situation of violence against women in the country. She also received documentation concerning the status of women in Cuba from sources outside the country.

6. The Special Rapporteur is fully aware of the importance of her visit to Cuba since the invitation extended to her was the first extended to any United Nations human rights mechanism by the Government. Government representatives warmly welcomed the Special Rapporteur's visit and in particular the Minister for Foreign Affairs and his Vice-Minister indicated that the visit of the Special Rapporteur was considered a "test case" before it was considered whether other special rapporteurs who had requested to go to Cuba would be invited.

7. For these reasons, the Special Rapporteur hopes that the present report will be considered in a ground-breaking context as constructive and forward-looking, with a view to paving the way for substantive cooperation between the Government of Cuba and relevant human rights mechanisms. It is important that the international community, including Governments and non-governmental organizations, strive towards more meaningful cooperation with the Government and people of Cuba in the field of human rights, in order to achieve the full promotion and protection of human rights for all persons in Cuba.

8. It is in this spirit that, in the present report, the Special Rapporteur considers the situation of violence against women in Cuba from the civil, political, economic, social and cultural rights perspective, while recognizing the need for further and more detailed study of the situation of human rights in Cuba by other relevant human rights mechanisms. The Government emphasized its continuing cooperation with the human rights treaty body mechanisms and is in the process of identifying gaps in national legislation to ensure full harmonization of Cuban national laws with its obligations under international law. The Vice-Minister for Foreign Affairs indicated that this was a multidisciplinary exercise within the Government. The Special Rapporteur hopes that the Government of Cuba will demonstrate its commitment to the universal values of human rights and its legal obligations under international human rights instruments by extending an invitation as soon as possible to those special rapporteurs who have requested to visit the country.

## II. GENERAL FINDINGS

9. The United Nations has strongly expressed its reservations with regard to the situation of human rights in Cuba. The Commission on Human Rights, in its resolution 1999/8, adopted in April 1999 by 21 votes to 20, with 12 abstentions, expressed its concern at the continued violation of human rights and fundamental freedoms in Cuba, such as freedom of expression, association and assembly and rights associated with the administration of justice, despite the expectations raised by some positive steps taken by the Government in the past few years.

10. With regard to the position of women, the situation is somewhat different. The Cuban revolution of 1959 was cited by all the Special Rapporteur's interlocutors as the turning point for Cuban women. It is held that women's full participation in development and in society has been gradually achieved in the past 40 years, since the revolution. Women's liberation has progressed in the professional sphere, in urban life and in rural areas. According to statistics provided to the Special Rapporteur, women in Cuba represent 58 per cent of university graduates, and occupy 65.5 per cent of professional and technical positions in the country and 30.5 per cent of management positions. Currently, 27.6 per cent of parliamentarians are women. The Special Rapporteur was pleased with the "feminization of the judiciary": 70 per cent of judicial professionals and 60.2 per cent of judges in Cuba are women. Cuba is one country where the progress of women has resulted in the need to consider quotas for men in certain university disciplines, such as medicine. The Cuban revolution has resulted in a great deal of benefit for women. This was a conclusion that was rarely contested by any party, group or individual the Special Rapporteur spoke to.

11. With regard to the specific problem of violence against women, the situation was more ambiguous. There was a perception among official circles that violence against women was not a problem in Cuba. The Special Rapporteur was informed that the statistics for reported cases

were low and that women were economically independent and so did not tolerate domestic violence. It was argued that the ideological tenets of socialism prevented recourse to violence, unlike in capitalist countries. These perceptions condition Cuban approaches to violence against women. Despite the best efforts of women's organizations, the legislature, especially, was adamant that nothing need be done with regard to violence against women and that no new legislation was necessary. The judiciary was also satisfied that the present position was adequate. This perception that all is well and that nothing need be done was disconcerting. Crimes such as domestic violence and sexual harassment are "invisible" offences. Unless a more proactive approach is taken by the institutions of government, the problems of domestic violence, rape and sexual harassment will not be dealt with adequately. The Special Rapporteur strongly urges the legislature and the executive to look into the law reform with regard to domestic violence, rape and sexual harassment that has taken place in other parts of Latin America and thereafter evaluate the need for any amendments in Cuba. In addition, programmes for sensitizing the judiciary, the police, prosecutors and the vast array of social service workers should be inaugurated by the Government.

12. While the formal institutions of government were sceptical about the need for programmes with regard to violence against women, the Special Rapporteur was very impressed by the work of the Federacion de Mujeres Cubanas (Federation of Cuban Women) (FMC). FMC has an extensive countrywide network and is very attuned to problems of violence at the grass-roots level. It has begun programmes of research and community intervention. FMC representatives introduced the Special Rapporteur to victims who had come in search of assistance at its many centres around the country. The programmes are described in detail in the sections below.

13. In follow-up to the 1995 Beijing World Conference on Women, in which Cuba participated, a State council which includes the participation of non-governmental organizations was established to implement the Bejing Platform for Action and the Cuban National Plan of Action. FMC is the focal point for overseeing implementation. During her visit to Cuba, the Special Rapporteur noted that most programmes relating to the elimination of violence against women had been established specifically in response to the Beijing Conference, that is to say, relatively recently. The Special Rapporteur commends these efforts, but also hopes that the proposed programmes and activities to combat violence against women in Cuba, which appear to be comprehensive and multidisciplinary, will indeed be implemented. It was still too early for the Special Rapporteur to evaluate the effectiveness of many of the programmes and she hopes to continue her dialogue with the Government and FMC with a view to monitoring progress achieved in this domain.

14. One vulnerable group of women in Cuba are the women whose political views are not acceptable to the Government. The refusal to accept independent political and civil organizations that would act as watchdogs vis-à-vis the Government is the main cause of this vulnerability. The Special Rapporteur received allegations and information about many cases of women being arbitrarily detained for political or journalistic activism. The Special Rapporteur entered into a dialogue with the Attorney-General about two compelling cases. The Special Rapporteur was told that she could meet the woman detained in one of these cases when she

visited the prison, but when she arrived she was told that the woman in question was unwell and in hospital. The problem of arbitrary detention remains one of the most serious violations of human rights in Cuba, even with regard to cases involving violence against women.

15. The Special Rapporteur was also concerned about the women being held in rehabilitation centres for "behaviour modification" as a result of their involvement in prostitution. As prostitution is not a crime in Cuba, the use of criminal procedure, such as imprisonment, forced labour in agriculture and restriction of visiting time to a few hours, violate their rights to due process of law.

16. The Special Rapporteur had to recognize in the course of her research that the economic sanctions imposed by the United States of America against Cuba have a significant impact on the social and economic situation of Cuban women. The lack of availability of medicines and pharmaceutical items was clearly evident in the State hospitals the Special Rapporteur visited, although the conditions in these hospitals were exemplary by third world standards. In addition, in relation to women's quality of life, women's groups presented evidence to the Special Rapporteur of hardships for women in the home caused by the embargo, and put forward the argument that the embargo and the hardships resulted in domestic violence. The counter-argument is that the situation is not a product of the embargo but of economic mismanagement by the central Government. However, the Special Rapporteur is convinced from all that she heard and saw that the embargo imposed unilaterally by the United States has a particularly serious negative impact on the lives of Cuban women and that other United Nations mechanisms, concerned with economic and social rights, should investigate the possibility that the United States embargo actually results in the denial of the economic and social rights of Cuban women.

## III. DATA COLLECTION AND VIOLENCE AGAINST WOMEN

17. It is hard to determine the scope and prevalence of violence against women in Cuba. The lack of statistics on violence against women remains a major problem, recognized by most people the Special Rapporteur met. Certain efforts are being made to remedy the situation. The Attorney-General informed the Special Rapporteur that the citizens complaint bureau within his Office had not received many complaints of violence against women, largely because of the silence surrounding this problem. There were indications from the Government that in implementation of the National Plan of Action in follow-up to the Beijing Conference, household statistics were going to be gathered. In connection with the lack of gender-disaggregated data, the President of the Supreme Court informed the Special Rapporteur that the Court, under the coordination of its Vice-President, was in an intermediate stage of designing a statistical system to remedy the situation. The President of the Provincial Court of Santiago de Cuba informed the Special Rapporteur that the provincial court had already for three years been coordinating research on violence against women with a view to appraising judges of the existence and extent of the problem. Such research had proved motivating for judges, who were now sensitized to working on issues relating to violence against women. The Special Rapporteur was also informed that some United Nations agencies were extending assistance to government authorities to gather data. UNICEF had supported data gathering in 1999 and UNIFEM was supporting the production of gender-disaggregated data.

18. The only statistics made available to the Special Rapporteur which were directly linked to violence against women were the following statistics provided by the Cuban Revolutionary National Police:

| | 1998 | 1999 (first half) |
|---|---|---|
| Injuries | 5,791 | 1,944 |
| Rape | 963 | 344 |
| Sexual abuse | 22 | 11 |
| Sexual "insults" | 40 | 25 |
| Lascivious abuse | 577 | N/A |

19. In 1998, 3.6 per cent of female victims of violence were minors. The majority of perpetrators are known to the victims, such as lovers, spouses and former spouses.

20. In the area of academic research, writing and discourse, significant information and documentation exists on the situation of women in Cuba and more recent studies also address the problem of violence against women specifically. Most research on women's issues in Cuba is carried out by "catedras de la mujer" (chair for women's studies) attached to academic institutions. There are 15 "catedras" nationally where academics specializing or interested in women's issues gather to carry out research on various topics.

21. At the University of Havana, the Special Rapporteur had an interesting discussion with women academics of the "Chair for Women's Studies". It was emphasized that the revolution had significantly changed the role of women in Cuban society, resulting in women being important protagonists in most social spheres. Of course, Cuban society still remained patriarchal, but the strengthening of women's social role was also supported by legislative change, contributing to certain changes in gender relations. It was held that, as in most Latin American countries, the "machismo" culture was still present and strong in Cuban society. However, since the revolution much had happened to change that situation.

22. Media professionals with whom the Special Rapporteur met indicated that although women are well represented amongst them, gender stereotyping and sexism in the media still invariably existed. At the same time, it was stated, the press and media were used to reporting openly about violence against women. The editor of a magazine called Sexologia y Sociedad informed the Special Rapporteur that while she received complaints from women victims of violence, those victims did not passively accept the violence, but knew their rights and took action against the perpetrators. That was evidenced in the high divorce rate amongst Cubans, which also spoke for the independence of Cuban women.

23. To address policy planning and institutional issues of general violence from a multidisciplinary angle, the National Commission on Prevention and Social Attention was established 15 years ago. It is composed of representatives of the Ministries of Justice, Culture, Education, Higher Education and Health and of mass organizations. The Commission has launched programmes on alcoholism and suicidal behaviour and has more recently developed the National Programme on Violence. Within the National Programme, a Working Group for the Prevention of and Attention to Intrafamilal Violence, in particular against Women was

established at the beginning of 1999 and an impressive work plan was presented to the Special Rapporteur. Planned activities included the production and dissemination of information leaflets on violence against women, the incorporation of the issue of violence against women into curricula of government officials in various disciplines, the gathering and analysis of statistics on violence against women, the holding of training seminars and workshops for law enforcement officials, prosecutors, judges and health personnel, the development of a television programme on violence against women and the organization of discussion forums on violence against women for officials and the general population. The Special Rapporteur therefore looks forward to receiving information on the implementation of these projected activities, as well as on initiatives undertaken by the Government to accommodate recommendations emanating from these activities, with a view to addressing the issue of domestic violence comprehensively.

## A. Domestic violence

24. The Cuban Constitution, in articles 41 to 44, explicitly grants women equal economic, political, cultural, social and familial rights with men and prohibits discrimination based on race, skin colour, sex, national origin, religious belief or any other form of discrimination offensive to human dignity. These rights are further supported by provisions in various laws, including the Family Code (Ley No. 1289 (1975)), which guarantees equal rights to women and men in marriage and divorce, and equal parental rights. Article 295 of the Penal Code (Ley No. 62 (1979)) also provides for sexual equality. However, the Penal Code does not contain any specific reference to domestic violence. Interlocutors held that the general provisions against physical and sexual aggression and rape in the Penal Code provide sufficient guarantees to sanction perpetrators of violence against women.

25. Although there is no special domestic violence legislation, studies by the FMC Centre for Research on Women indicate that the majority of cases of violence against women that come before the courts are domestic violence cases. Of these, psychological violence is the most common form of violence against women. These studies also show that there is a clear link between social violence and family violence. It is for these reasons that the Special Rapporteur and some specialists are concerned that domestic or intrafamilial violence is not defined as a crime in itself, nor mentioned specifically in either the Civil, Family or Penal Codes nor the Constitution.[1] Such a gap in the legislation has consequences in itself, since, it is held, women victims themselves, the perpetrators and the criminal justice system do not attach enough importance to the problem nor perceive acts of domestic violence as criminal acts. Despite studies which show that intrafamilal violence exists in all its manifestations, across cultural, ethnic, financial or racial delineations, the few cases which are brought before the justice system demonstrate a serious lack of awareness of the matter, its consequences and its impact.[2]

26. The Special Rapporteur was informed that the FMC was discussing the possibility of proposing specific domestic violence legislation and the possible establishment of family tribunals, possibly for the Beijing+5 review. The Special Rapporteur strongly encourages these initiatives.

27. With regard to sentencing, the Special Rapporteur was informed that since no specific domestic violence legislation exists, sentences are determined by the level of physical violence

and its consequences: physical violence without consequences carries a sentence of from 3 months to up to 2 years, physical violence with consequences of from 2 to 6 years, and physical violence with severe consequences of from 5 to 12 years. These sentences can be supplemented by additional sentencing, such as the confiscation of property or an injunction order.

28. In a study carried out in 1995 in Pinar del Rio, it was shown that perpetrators of violence against women are mostly family members. The traditional imbalance in workload in the home for men and women was cited by many interlocutors as the most common form of violence affecting women within the family. It was also held that in Cuba, in view of the strong social cohesion and close communication networks between families and neighbourhoods, cases of violence against women cannot be hidden and when cases become known, community intervention is likely. Experts of the Institute of Philosophy pointed out that the community structure is so strong in Cuba that daily life is socially regulated by the neighbourhood, the district and the people's council, which results in very strong popular participation in community life, including in combating violence in the family. The UNICEF representative also held that decentralized local government structures and popular participation in government was effective in Cuba, resulting in above average social and psychosocial support structures for the population. Despite serious lack of capacity in areas such as strengthening infrastructure, areas such as education and health are still given priority attention by government authorities.

29. The Institute for the Development of and Research on Legislation within the Office of the Attorney-General has studied domestic violence from a criminological angle since 1993. The first study constituted a survey of Havana province to observe criminality within the family, but only very few cases were detected. The Institute was also planning to hold a diploma course on transdisciplinary criminology, and domestic violence in particular. The Special Rapporteur welcomes such academic initiatives, which can shed light on the complex issue of domestic violence with a view to making recommendations for addressing the problem effectively at the national level, especially bearing in mind necessary legislative reform and sensitization of the criminal justice system.

30. The Special Rapporteur was appraised of various other initiatives, especially in the area of training and awareness-raising on domestic violence, which were being established at the time of her visit to Cuba. In her meeting with the President of the Supreme Court, the Special Rapporteur was informed that, as a result of the National Plan of Action developed after Beijing, the training of judges in the area of violence against women was made a priority issue. Similarly, the Cuban Revolutionary National Police is involved in implementing the Cuban National Plan of Action for Beijing, which includes gender-disaggregated analysis of data, increased application of administrative and preventive measures to curb violence against women and the training of police on domestic violence issues. The Special Rapporteur was informed that the basic police training is a three-year programme which includes psychological and legal training so that police are well equipped to deal with women victims and are sensitized to women's issues. There are no police training programmes addressing violence against women specifically, but the police are reportedly working with the FMC to develop such special programmes. The National Social Education Centre is developing awareness-raising programmes especially for the police, in order to integrate violence and gender issues into police training.

31. A representative of the Ministry of Health informed the Special Rapporteur that after the Beijing Conference the Ministry started to realize the importance of training health professionals on issues relating to violence against women, since health professionals must be able to carry out socio-medical diagnostics of victims of violence in order to refer them to the appropriate places for assistance and treatment. Health professionals are also engaged in identifying families and persons with certain risk factors, with a view to taking preventive measures.

32. According to Ministry officials, epidemiological violence against women is not a problem: there is no doubt that violence against women exists, but it is not a health issue. Nevertheless, the Ministry of Health participates actively in inter-sectoral community programmes which address comprehensively the causes and consequences of violence, including alcoholism, prostitution and children without parental support. At the community level, family doctors are trained to work with families and other important partners in the community, such as the police and the judiciary, to prevent violence and to identify families with risk factors and assist them to improve their situation. There is increased awareness among professionals and the general population that violence against women can manifest itself not only physically but also psychologically.

33. At the Hospital Galixto-Garcia in Havana, the Special Rapporteur was informed of 82 deaths from trauma in the first half of 1999, 20 of them women, of which one death was a crime of passion (the hospital treats over 50 per cent of the nation's trauma cases). It was generally held that violence against women was not diagnosed in large numbers at the hospital, while it was recognized that the hospital personnel was still at a learning stage especially regarding the detection, treatment and reporting of psychological violence against women. In a three-month study of 110 cases which was carried out to assess appropriate response needs, 10 cases involved physical violence against women, 34 cases were of a psychological nature, 8 were cases of sexual violence and 3 were cases of abandonment. Thus, the statistics provided to the Special Rapporteur do not show a significant problem, but it is also certain that not all cases of violence against women are reported. In cases where victims do not want to report to the police (although all hospitals have police stations attached to them), social workers refer the victims to alternative response mechanisms.

34. At the University Hospital of Villa Clara, the Special Rapporteur was presented with figures relating to deaths in 1998, of which 57.2 per cent were female. Gender-disaggregated analysis showed that the most common cause of violent death for men is traffic accidents, while for women it is accidental falls with fractures (related to osteoporosis setting in earlier in women than in men). These figures, however, may deserve deeper investigation. The Special Rapporteur also noted that figures for suicides (over 75 per cent of them women) far exceeded homicides: a surprising statistic.

## B. Rape and sexual abuse

35. Statistics provided by the Ministry of Justice indicated 650 cases of rape in 1996, 747 in 1997 and 664 in 1998. Between 70 and 80 per cent of the perpetrators were sentenced. In Pinar del Rio, the Special Rapporteur was informed that cases of rape do occur but not to a "statistically significant" degree. The necessity for more systematic and analytical data gathering speaks for itself.

36. Sanctions against rape and sexual abuse are provided for in articles 298 and 300 of the Penal Code (Ley No. 62 (1979)). The Special Rapporteur was informed that the law does not discriminate in cases of marital rape. On 5 February 1999, Law No. 87 introduced amendments to the Penal Code, which, according to the Special Rapporteur's interlocutors, increase the legal protection for women and girls and severely increase penalties for "lascivious conduct" including exploitation of the prostitution of others. The Special Rapporteur is, however, concerned that article 298 (3) provides for the death penalty for rape and she strongly regrets that, in March 1999, the Cuban Government extended the death penalty to an additional two crimes, namely international drug trafficking and the corruption of minors (Gaceta Oficial, 15 March 1999). The Special Rapporteur urges the Government to abolish the death penalty and to accede to the International Covenant on Civil and Political Rights and its Optional Protocols.

37. With regard to sentencing, the President of the Supreme Court was of the opinion that sentencing for crimes of violence against women were "at a sufficiently rigorous level" in general, including for rape. The sentence foreseen for rape without physical abuse ranges from 4 to 10 years' imprisonment and for aggravated rape (including of a minor, rape by a public official, recidivism, the existence of a professional relationship with the victim or rape related to organized crime) up to 30' years imprisonment. Physical violence without serious consequences is punished by imprisonment of from three months' to two years' imprisonment, with serious consequences (such as the destruction of the reproductive health system) from 5 to 12 years and aggravated assault up to 10 years. The parameters for sentencing are established by the law, the judge possessing discretion as to the individual sentence within that framework.

## C. Sexual harassment

38. Article 301 of the Penal Code (Ley No. 62) sanctions perpetrators of sexual harassment, in aggravated circumstances such as abuse of professional or familial relationships, with from two to five years' imprisonment.

39. The Special Rapporteur was, however, surprised to learn that sexual harassment, especially in the workplace or in educational institutions, was considered non-existent in Cuba. It was explained that each workers' centre has a commission which takes into account all the characteristics of a particular post when selecting people for employment, so that difficult situations will not arise. Should labour disputes of any nature arise, the worker has the right to resort to the labour judiciary, in the first instance in the labour office, and in second instance in the national courts. It was noted that women form 46 per cent of the membership of the labour commissions.

40. In her meeting with trade unionists, the leaders of the commerce, cultural and communications trade unions informed the Special Rapporteur that no cases of sexual harassment in the workplace had come before them. The Central de Trabajadores de Cuba (Office of Cuban Workers) had also not received any complaints of sexual harassment in the workplace.

41. In meetings with the Special Rapporteur, representatives of the People's and Municipal Councils of Villa Clara also considered that sexual harassment was not an issue affecting women

in Cuba. It was considered that adequate measures were in place and that specific sexual harassment legislation was not warranted. However, preventive education and training on issues relating to sexual harassment in the workplace and in educational institutions could be useful.

42. When meeting with social workers, community leaders and Members of the Provincial Parliament and local government authorities in Pinar del Rio, the Special Rapporteur was also assured that sexual harassment in the workplace did not exist generally. If a case should occur, the strong integration of the FMC into all community structures would counteract such tendencies and the Comision del Empleo Feminino would seize the case immediately.

43. While hoping that the above-mentioned measures successfully protect women against sexual harassment to the extent that it is considered nearly non-existent in Cuban society, the Special Rapporteur notes the comment of one expert that sexual harassment remains less defined and less well-known than sexual abuse and rape. The same expert adds that the act of sexual harassment is hardly ever reported since it is difficult to bring proof for lack of definition, because the victims are not believed or because they are ashamed or guilty. As a result, sexual harassment is virtually unknown, unrecognized and difficult to evaluate.[3] In addition, some women's testimonies received by the Special Rapporteur spoke of a sad tendency in Cuba of men in professional posts, such as university teachers, factory managers and government employees, lusting after and harassing young females in subordinate positions, demanding sexual favours in exchange for promotions, clothes and food. These men were referred to as "Atitimaniacos" (young women in Cuba are colloquially referred to as "Atitis"). Other testimonies described the sexual abuse and harassment that many women are exposed to when working in the agricultural sector, particularly in the fields.[4]

44. It is for these reasons that the Special Rapporteur believes that information campaigns about sexual harassment and the remedies available for victims of sexual harassment should be carried out systematically, especially in educational institutions and workplaces. In addition, there should be discussion programmes on radio and television and articles in the printed media should be widely disseminated in order to bring to light this neglected social issue.

## D. Trafficking and prostitution

45. In her meetings in Havana, as well as in the provinces, most of the Special Rapporteur's interlocutors held that, as a result of the Cuban revolution, Cuban society had succeeded in virtually eliminating prostitution. Prior to 1959, prostitution was widely stated to have existed out of need; the improvements in the economic and social status of women thereafter had eliminated that need. However, the Special Rapporteur was informed that with the gradual increase of tourism in Cuba, prostitution had been increasing in recent years, mostly in tourist destinations such as Havana and Varadero. The women who engage in prostitution were characterized as originating from families without morals or from dysfunctional families and it was emphasized that any prostitution that might exist in Cuba was not practised in order to meet economic needs, but rather as a result of crumbling social and moral values. Furthermore, as characterized by President Castro himself, Cuban women who sell sex are not prostitutes but rather "jineteras", since no one is forcing them to do so "but they do it on their own".[5]

46. At the same time, however, the Special Rapporteur notes that with the rise of tourism, Cubans without access to the dollar economy and without employment in the much sought after tourism sector are inevitably at an economic disadvantage which is naturally exacerbated by the tightening of economic sanctions and contrasted with the attractions of a Western lifestyle brought in by tourists. The Special Rapporteur therefore believes that the temptation to earn hard currency from tourists is one that is hard to resist.

47. Other sources hold that Cuban prostitution today is characterized by women with professional and vocational education and careers who are unable to meet basic living costs from their local currency salaries. Unlike the traditional woman in prostitution who is considered a social outcast, the "jineteras" of today predominantly serve foreigners who pay in hard currency, and are considered "providers" for their families.[6]

48. According to national legislation (article 302 of the Penal Code, Ley No. 62), prostitution in itself is not a crime in Cuba, but all acts relating to prostitution, such as the exploitation of prostitution of others, are punishable by law with deprivation of liberty for from 4 to 10 years. "Pimping" in aggravated circumstances, such as by public officials, is sanctioned with up to 20 years' imprisonment. Trafficking in women is sanctioned with up to 30 years in prison.

49. According to the Chief of the Cuban Revolutionary Police, prostitution in Cuba is very different in character than in many countries since it is not an organized phenomenon. In Pinar del Rio, for example, there exist "casas de cita" (meeting houses) where prostitutes are known to take clients, but more permanent commercial locations, such as brothels were said not to exist. Similarly, most women and girls found in prostitution do not engage in sex work full-time, but rather in combination with other activities or employment. At the same time, however, the Special Rapporteur received information that there are individual operators who act as mediators between local women and foreigners, establishing the price for the sexual act and arranging for a location. It is reported that these intermediaries take up to 80 per cent of the price that the client pays for a woman. This is an indication that prostitution in Cuba is most likely more organized than government officials like to think.

50. The Special Rapporteur received information that, alongside the modifications to the Penal Code in early 1999, law enforcement officials conducted sweeps in the streets of Havana with a view to cleaning them of prostitutes. Another source indicated that some of these women received blows to the head and were subsequently treated in the Hospital Calixto-Garcia in Havana. The Special Rapporteur was, however, not able to confirm these reports and the hospital staff she met indicated that they were not aware of such incidents. It appears that since these increased repressive measures against sex workers, much of their activity has disappeared from the streets and is now more hidden in bars, nightclubs and private houses.

51. The Special Rapporteur also received information that when women are found exercising prostitution, they are taken back to their provinces by the police and banned from leaving their provinces for a specified time. In accordance with Decree 217 of April 1997, regulating internal migration for Havana, restrictions on movement are provided due to public health, welfare and public order concerns.[7] This decree raises questions about freedom of movement within Cuba, impinging upon rights guaranteed in the Universal Declaration of Human Rights.

52. Women who are found in prostitution repeatedly and/or return to Havana despite restrictions on movement are committed by the judicial authorities to rehabilitation centres. The Attorney-General informed the Special Rapporteur that, recently, in Camaguey province, 300 girls found in prostitution were sent back to school and specially trained police officers, social workers and FMC volunteers were working with the families of the girls to ensure complete rehabilitation. The Attorney-General also spoke of centres ("campamientos") established recently, where women with certain risk indicators could be placed for rehabilitation. These women are brought before the courts and can be sentenced to up to four years' confinement in these centres, where they are required to work, mostly in the agricultural or horticultural sectors. Each "campamiento" has a capacity of 80 to 100 and it is envisaged to have one in each province.

53. As mentioned above, the Penal Code does not criminalize prostitution itself. It does, however, define a state of dangerousness ("el estado peligroso") as the tendency of a person to commit crimes which are observed to be in contradiction with the norms of socialist morality (arts. 72-74, Ley No. 62). Anti-social behaviour and causing disturbance to the community are considered manifestations of such dangerousness. If a person is determined to be dangerous in accordance with the aforementioned provision, the Penal Code allows for the imposition of pre-criminal measures, including re-education for periods of up to four years. The person may be detained by the State during that time until the dangerousness disappears from the subject. The Special Rapporteur has difficulties with the concept of a judicial sentence for an activity which is not a crime under national law. In addition, the arbitrariness of leaving a sentence open until it is considered that the person no longer poses a social threat leaves room for abuse and subjectivity which is inconsistent with fair judicial procedures.

54. At her request, the Special Rapporteur was able to visit one of the rehabilitation centres, in the western province of Pinar del Rio. At the time of her visit, 90 young women registered in the province as having engaged in prostitution were being assisted by the provincial FMC through social and community workers and reintegrating them into the labour force. The Special Rapporteur was briefed by a FMC prevention worker on the procedures followed when a woman is identified as or suspected of being a prostitute. After an initial interview with the woman to establish possible causes for her anti-social behaviour, interviews are conducted with her family and members of the community to establish her background and family history and thus to identify the critical areas of risk which have led the woman to her current situation. The Special Rapporteur was assured that this procedure is carried out with discretion, nevertheless, it is very likely that the community is appraised of the woman's case.

55. The Pinar del Rio rehabilitation centre was established in May 1999 and is located on the premises of a former penitentiary "Centro Penitentiario" (the old sign was still hanging outside when the Special Rapporteur visited). At the time of the Special Rapporteur's visit, 35 women, mostly from Pinar del Rio but also from Havana, were held at the centre. The centre was surrounded by fences and the officials managing it were penitentiary staff in uniforms of the Ministry of Interior. Staff at the centres receive psychological and educational training and all employees are female. The women are housed in large dormitories and sleep on bunk beds.

56. As mentioned above, women found in prostitution are sentenced by a judge to spend up to four years at these rehabilitation centres, where they are required to work six to eight hours a

day, mostly in the agricultural sector. The length of time they spend at these centres depends on the degree of risk to society that the women are estimated to represent. They are allowed to receive two-hour visits every 15 days from family and friends, but are not allowed to move freely outside the facility. Centre officials informed the Special Rapporteur that they were preparing, in cooperation with the Ministry of Education, to provide courses at the centre but that in view of the recent opening of the centre these had not yet been established. The women at the centre also participate in organized artistic events, sports activities or excursions outside the centre. With regard to a complaint mechanism, the Special Rapporteur was informed that since the centre was directly under the Attorney-General's Office, the regular public complaint mechanisms could be used when required.

57. The Special Rapporteur spoke to a number of women held at the centre, but regrets that she was not allowed, despite her request, to speak to the women in private. Most of the women the Special Rapporteur spoke with, seemed to have a family history of abuse and/or violence, as well as unstable employment histories, which had lead them to spend time on the beach, in bars and in restaurants looking to meet men. One of the women had been picked up by the police on the beach when soliciting a tourist. It seemed, however, that these women had not been engaged in prostitution for long, nor systematically, nor in an organized manner.

58. In accordance with its commitment under the Plan of Action for the follow-up to the Beijing Conference, the FMC has been engaged in discussions with relevant government authorities, including the Ministry of Justice, the Ministry of Tourism, the Cuban Institute of Radio and Television and the Ministry of Culture, to ensure that Cuban women are not promoted as a tourist attraction. The FMC also realizes that it is important to work with tour operators to verify that links with foreign countries are not exploited for sex tourism. The Attorney-General emphasized the need for the Cuban authorities to review tourist publicity which depicted healthy and beautiful Cuban women, inviting people with the wrong intentions. The Government informed the Special Rapporteur that all tour operators engaging in any suspicious activities were immediately suspended. During her visit to Cuba, it was reported that the Government undertook a "energetic cleaning operation" within its tourism industry.[8] In fact, the managers of all tourism companies associated with a particular foreign tourist operator called "Cubamor" were let go, since it became known that the tour operator was organizing the travel of single men to Cuba in order to stay at a middle-class hotel outside Havana where government control on contacts with young locals was minimal or non-existent.[9]

## E. Women in detention

59. The Special Rapporteur visited the Prision de Mujeres del Occidente, the women's prison known as "Manto Negro", (Black Mantle) in Havana, where at the time of the visit there were 807 inmates aged 16 years and over, from the provinces of Havana and Pinar del Rio (the total capacity of the prison is 1,507). The staff, including 90 correctional officers, were all female, with the exception of one doctor and one psychologist. The Special Rapporteur inspected the medical facilities. With two nurses on duty 24 hours a day and on-site dentistry and radiology facilities, they are comprehensive and are supplemented by the outside services of a psychiatrist, dermatologist, gynaecologist and paediatrician. The Special Rapporteur was informed that daily

attention is given to medical complaints and inmates do not have to wait to see a medical professional. Inmates are required to work 8 hours a day, mainly in horticulture or clothesmaking, for which they receive a full wage.

60. Inmates also have the opportunity to cook their own food and are allowed food rations from outside visitors. The living quarters are generally for two to four person occupancy and, in view of the only half-maximum-capacity number of inmates, the facilities viewed by the Special Rapporteur seemed adequate and well managed.

61. The Special Rapporteur regretted, however, that she was not able to speak with any inmates in private and that the detainee she had requested specifically to interview, Marta Beatriz Roque Cabello, had allegedly been taken to receive medical attention outside the prison at the time of her visit. The Special Rapporteur had requested to meet Ms. Roque Cabello in view of allegations that lack of medical attention at Manto Negro was severely affecting her health. The Special Rapporteur regrets that she was not given the opportunity to verify these allegations.

62. Since the Special Rapporteur visited only one prison and could not interview prisoners in private, she was not able to confirm nor deny allegations, made in a recent Human Rights Watch report on Cuba, that Cuba confines its sizeable prison population in substandard and unhealthy conditions, in which prisoners face physical and sexual abuse, in violation of numerous provisions of the Standard Minimum Rules for the Treatment of Prisoners.[10] The Human Rights Watch report alleges that most prisoners in 24 maximum security prisons and other detention centres are provided with insufficient prison diet, suffer from overcrowding and lack of medical attention and are forced to undergo politically oriented "re-education programmes", and that political prisoners are frequently subjected to excessive punitive measures akin to torture, inhuman or degrading treatment.[11]

63. During her visit to the women's prison in Havana, the Special Rapporteur came across two young female prisoners from the United Kingdom, Michele and Rachel, who informed the Special Rapporteur that they had been held in detention for 7 months without trial on charges of drug possession (drugs had allegedly been found in their luggage). The girls informed the Special Rapporteur that they could not afford a lawyer, but had not yet been provided with legal counsel.

64. The Special Rapporteur expressed her concern over the situation of these two British detainees to Foreign Ministry officials during her visit and requested more detailed information on their cases. At the time of writing the present report, such information had not yet been received.

65. The Special Rapporteur is also concerned that Michele and Rachel seemed to be minors. The Special Rapporteur would like to recall that holding minors and adults together in detention facilities violates international prison regulations (Rule 8 of the Standard Minimum Rules for the Treatment of Prisoners) whose primary purpose is to protect minors from abuse by adult prison inmates. The Special Rapporteur therefore commends the adoption by the Government of Cuba in February 1999 of Law No. 87, reforming the Penal Code, article 1 of which provides that

minors under 20 years of age should be held in separate establishments from older detainees or at least in separate areas in the same facilities. The Special Rapporteur urges the Government to implement this legislative reform without delay.

## F. Civil and political rights of Cuban women

66. While the Special Rapporteur was pleased to see the interest taken by the Government of Cuba in the economic and social rights of women, the Special Rapporteur, along with many of her counterparts, remains concerned about the enjoyment of civil and political liberties within Cuba. Certain aspects of human rights are considered the legacy of bourgeois liberal democracy. The Cuban Government is of the view that individuals enjoy full civic and political rights within a socialist framework. Although members of the Government and its sympathizers are well taken care of, there is no real opposition outside that framework. There is limited freedom of association, and freedom of speech is restricted to certain political parameters. In this sense, women's general political and civil rights are not respected. Although there is vibrant discussion within the officially-accepted civil organizations, the lack of organizations that are financially and ideologically independent of government denies the possibility of a watchful, creative civil society. The need for civil and political rights to be extended must be emphasized, if women are to have full participation in civil society and government.

67. The Special Rapporteur is also concerned that the Constitution of the Republic of Cuba establishes a direct line of authority and subordinance to the National Assembly and the Council of State, which can have serious implications for the independence and impartiality of the courts, potentially affecting the right to a fair trial. In addition, the Special Rapporteur has received reports of arbitrary arrests, prolonged pre-trial detention and restrictions on the rights to adequate defence.[12] Similarly, the Special Rapporteur is concerned that the Constitution provides that the National Assembly of People's Power has the authority to select and to dismiss the People's Supreme Court, the Attorney-General and the Deputy Attorney-Generals (arts. 75, 126 and 129). In accordance with article 128 of the Constitution, the Office of the Attorney-General is subordinate to the National Assembly and the Council of State, and article 130 orders the Attorney-General to render account of his work to the National Assembly. All these provisions further impede the impartiality and independence of the Cuban judiciary, thereby restricting the fulfilment of all human rights and fundamental freedoms of Cuban women and men.

## G. Economic and social rights of Cuban women

68. The Communist system in Cuba provided Cuban women with an economic and social safety network which put them in a better position statistically than most of their Latin American counterparts. In terms of education (95 per cent female literacy), participation in the workforce (42.5 per cent) and professional and technical training Cuban women are way ahead of women in most other countries. In addition, the Special Rapporteur was informed, 55.16 per cent of trade union leaders at workers' centres are women. Five of 19 trade unions are led by women (the sciences, public administration, culture, commerce and communications unions). Non-discrimination against women at the workplace is a constitutional right.

69. Many Cubans argued that the United Nations seemed only interested in individual violence, conceptualized in terms of physical, sexual or psychological violence. They claimed

that in Cuba women suffer most significantly from another form of violence, namely structural violence, from the economic exploitation and shortages created by the economic sanctions against Cuba. It was reiterated repeatedly that women carried disproportionately the burden of economic sanctions and of "making ends meet" for the family.

70. All the people whom the Special Rapporteur met held the opinion that the economic embargo has a differentiating impact on women in society, with women carrying the heaviest responsibility to find innovative means to cope with the shortage of supplies, such as medicines, cooking oil, soap, female hygiene products, nappies, paper, etc. Women have been most affected by the embargo since they are the principal actors in domestic life. The embargo also has direct consequences for women's health since medical supplies are short. In particular women may suffer psychological consequences as a result of lack of specific female medical care, such as lack of contraceptives and pap-smears. In addition, as a result of the food shortage, women often are the last in the family to eat or do not eat at all. At the same time, women's innovative skills during the period of the embargo have created an idiosyncrasy in society, where, because of these special skills the real impact of the embargo is not perceived as being as strong as it in fact is.

71. In addition, according to officials of the Ministry of Health, the economic embargo is having an impact on the public health system, since Cuba is unable to have access to international credit for medical programmes, to import medical technology or to import medication from the United States. The Special Rapporteur was also informed that Cuba did not have full AIDS treatment capacity as a result of the lack of medical imports. The National Centre for the Promotion of and Education in Health has orgranized 40 workshops to train government staff on sexuality, safe sex, HIV/AIDS and the use of condoms. The Special Rapporteur commented that, especially in view of the embargo, it was commendable that health has been selected as a national priority. The Special Rapporteur also noted that the United Nations agencies present in Cuba provide a strong humanitarian safety net for the country and that most United Nations programmes are targeted to address humanitarian needs created as a result of the economic embargo.

72. The General Assembly has adopted resolutions condemning the embargo for eight consecutive years. The latest such resolution was adopted in October 1999.

73. According to Ministry of Health data, 65 per cent of doctors and 95 per cent of nurses in Cuba are women. The Government assured the Special Rapporteur that the health system itself is public, free and accessible to all Cubans, providing support and services for women at all stages in their lives (life expectancy is 76 years for women).

74. According to statistics provided by the Ministry of Labour, women form 42.9 per cent of the labour force, as opposed to 12 per cent in 1959. Women workers have lost jobs in some production sectors and salaries have decreased by 70 per cent as a result of the embargo. In 1996, a revitalization of the labour market was carried out, which included the establishment of women's commissions at all levels, involving the participation of the workers' centres, the Ministry of Labour and the FMC.

75. The national trade union provides a platform for considering women workers' issues and cooperating with the FMC to address these issues. As a result of collective bargaining, women workers have equal rights under the social security law and are protected by maternity laws and by specific laws concerning women workers. Maternity laws provide for 18 weeks' fully paid maternity leave, after which there is an option to take a further six months' leave on 60 per cent pay, and the right to return to work up to one year after the birth. Special programmes also exist for single working mothers. The Special Rapporteur noted positively the social services available for women workers.

76. At the Instituto Pedro Kouri, the Special Rapporteur was informed of the National Programme for the Prevention of HIV/AIDS, which is an intersectoral and multidisciplinary strategy to prevent HIV/AIDS infection. At present, Cuba has a very low (0.02 per cent) incidence of AIDS and a low transmission rate. In the first half of 1999, 2,763 persons were diagnosed with HIV infection, of whom 868 have AIDS (a rate of 5.6/million compared to 12.1/million in 1998). The national strategy addresses epidemiologial monitoring and control, education (including sex education, and the training of family doctors and other relevant professionals and community leaders), research and laboratory studies. The interdisciplinary Grupo de Prevencion y Lucha Contra el Sida is chaired by the Minister of Health and has participation from the Ministries of Education, Culture, Sciences, Tourism, Justice, Labour and Commerce, as well as the FMC and other mass organizations.

77. The Special Rapporteur was appraised of a comprehensive HIV/AIDS programme financed by UNFPA and UNAIDS which includes the identification of zones of risk and a communication and advocacy strategy in the fight against HIV/AIDS. UNICEF is working with preparatory school students to train them as HIV/AIDS information advocates for the communities.

78. According to the municipal chapter of FMC for Havana there are some specific characteristics that affect the situation of women in the capital region. There is a serious housing shortage, in particular in Old Havana and the peripheries of the capital city. Overpopulated living conditions have resulted in an increase in intra-familial tension and violence, since often up to three generations are forced to live in one or two room apartments. Over 21 per cent of the population is over 60 years old, which leaves elderly women most vulnerable to abuse in such living conditions. In the neighbourhood of the Plaza de la Revolucion in Old Havana, the FMC organized an awareness-raising workshop to address issues relating to violence against elderly women, since this has crystallized as an increasing problem.

## IV. CIVIL SOCIETY AND MASS ORGANIZATIONS

79. The Special Rapporteur was informed by the Minister of Justice that, in order to form an association, an application must be submitted to the Ministry of Justice in accordance with the law on associations. The proposed statute of the association will then be examined to determine whether the objectives are in accordance with legislation. In this connection, the Special Rapporteur is concerned that the Cuban law on associations (Ley de Asociaciones No. 54 (1985) y Su Reglamento (1986)) requires all associations and organizations to cooperate and coordinate with relevant State organizations and, as Human Rights Watch alleges, effectively

bars the legalization of any genuinely independent organization, requires associations to accept broad State interference in their activities and provides arbitrary State authority to shut them down.[13]

80. According to the Ministry of Justice, there are currently 2,200 legally registered organizations in Cuba, of which 60 are specifically associations of women, but 1,034 deal with issues relating to women. The Special Rapporteur had requested to meet with non-governmental organizations during her visit and had the opportunity to meet with a large group of representatives of non-governmental organizations in consultative status with the Economic and Social Council. Regrettably, owing to the formal setting of this meeting, the Special Rapporteur was not able to have a substantive dialogue with the NGO representatives. The Special Rapporteur also did not meet with any representatives of organizations that would have been openly critical of the Government's policies and practices.

81. The Special Rapporteur was accompanied throughout her visit by representatives of the Cuban Women's Federation (Federacion de Mujeres Cubanas) (FMC), a mass organization to which 80 per cent of Cuban women belong.

Federacion de Mujeres Cubanas

82. Federacion de Mujeres Cubanas (FMC) (Cuban Women's Federation) is the women's national umbrella organization, working towards the full integration of women in economic, political, social and cultural life in conditions of equal opportunity. FMC collaborates closely with government authorities, such as the Ministries of Labour, Education and Health. FMC is the national coordinating structure for the implementation of the Beijing Platform for Action and of the Cuban National Plan of Action for Beijing.

83. FMC receives complaints of any kind from individuals: in 1998, 25,239 cases were received at the FMC national and provincial headquarters in Havana, of which 133 were cases of violence (75 cases of violence against women perpetrated by men; 6 cases of violence by women against men; 35 cases of violence by women against children; 14 cases of violence by men against children; and 3 other cases). The Special Rapporteur was informed that FMC investigators are trained to identify violence against women and its symptoms, even where the actual complaints lodged were of a different nature.

84. The Special Rapporteur was informed that UNICEF Havana has been supporting a series of workshops on women's issues, entitled "Para la vida", organized by the FMC at the provincial level, addressing violence in the family and in the community, and conflict resolution through an integrated community development approach. These workshops have succeeded in bringing grass-roots concerns to certain strategic levels. In addition, UNICEF has contributed to the production of over 90 television spots (or short "telenovelas") which address themes of sexuality, violence and other related issues. The Special Rapporteur was informed of 200 radio commercials supported by UNICEF on similar themes. UNICEF also supports the publication of booklets such as "Women in power" and "Women as objects and subjects of violence", as well as an information pamphlet on violence against girl children for distribution in schools.

85. The FMC Centro de Estudios de la Mujer (Centre for Women's Studies), established in 1996, carries out research on the basis of which FMC makes recommendations to the appropriate authorities. Thematic studies undertaken by the Centre include studies on "women, power and decision-making", "women and nutrition" in cooperation with the World Food Programme, and on gender relations in different sectors of society.

86. The National Programme on Violence of the National Commission on Prevention and Social Attention was established three years ago by FMC, which acts as programme coordinator. The objective of the programme, which brings together 76,000 community organizations, is to promote the development of the family and of women, and equality of opportunity for women. Under the programme, prevention of violence against women is addressed from a multidisciplinary and multisectoral approach. One of the priority areas of activity is training and awareness-raising among the general population as a preventive tool. Training on violence against women in the family has also been provided to governmental and administrative authorities, such as the National Police Council, the Ministry of Justice, the Attorney-General's Office, the Ministry of Health and the National Institute for Radio and Television. Community activities, such as workshops for reflection, with specifically designed materials, address topics such as violence against women in couples and violence against children within families. Leaflets containing the protective legislation with regard to intrafamilial violence have also been produced.

87. Under this National Programme on Violence, a working group has been analysing cases of violence before the judiciary and has carried out comparative studies on legislation in the Latin American region, with a view to identifying gaps in existing intra-family violence legislation. The Special Rapporteur was informed, for example, that the working group had recently submitted to Parliament a proposal recommending that any family relationship between the victim and the perpetrator should constitute an aggravating circumstance in a criminal case, it had been approved by Parliament (Law No. 87). At the same time, however, one of the members of the working group pointed out that although Cuban legislation does extend wide protections to women, the mentality of the people has not always evolved in parallel with the revolutionary ideas. Therefore, the working group is also cooperating with the media to eliminate sexism in society.

88. The FMC has 175 "Casas de Orientacion de Familia" nationwide which are managed with the participation of professionals from various disciplines, including psychologists, social workers and health professionals. The programme of work of each "casa" is designed by its employees to respond to the particular situation of women in a given community. In addition to various assistance services, the "casas" also disseminate information materials in print and on the radio. The Special Rapporteur visited the FMC "Casa de Orientacion a la Mujer y a la Familia" in Santa Clara, Villa Clara province, which was the first to be established in the country, in 1990, on the basis of recommendations made by the first chair of women's studies established in the country (also in Santa Clara). The Women's Studies Department now carries out research on case studies received from the "Casa" with a view to making further recommendations to widen the approach to women's issues to include women's issues outside the family context, such as prostitution, labour issues and sex education.

89. The "casas" are an essential link between FMC and the community and reach out to individual women and to entire families. A specialist at the "casa" in Villa Clara stated that violence against women is not a widespread phenomenon in Cuba, as it was in other Latin American countries, but that it did exist. In the past one year, in Villa Clara 57 cases of violence against women had been brought to the "casa", of which 9 involved physical violence, 1 sexual violence and 47 psychological violence. Another 552 cases of violence against women were observed in the same period, but were not reported. The most common causes for violence against women were cited as communication problems between partners, maltreatment of children and the humiliation of partners. The "casas" also provide women with training for income-generating activities such as hairdressing and massage services, as well as psychological counselling, including courses in building self-esteem.

90. In the province of Pinar del Rio, FMC registered 38 cases of violence against women in 1998 out of the total of 2,000 cases submitted to FMC. Those 38 cases mainly related to spousal violence and property disputes. In Pinar del Rio, there were currently 90 prostitutes who were in rehabilitation.

91. The Special Rapporteur was astonished to note that there were no shelters in the whole country. Experts with whom the Special Rapporteur raised this concern considered that shelters were not necessary since the women were adequately protected by the law and by the community, and in the rare case of need for a place to stay, women often stayed with family or neighbours. Nevertheless, the Special Rapporteur urges FMC to establish shelters, at least with a few places, in all provinces in order to encourage women to come forward and report on violence against them, and to ensure their independence if they decide to move on with their lives from a violent situation.

92. At a meeting with members of the National Union of Artists and Writers, the Special Rapporteur was appraised of some innovative methods of addressing violence against women through the arts. In one radio short story entitled "Yo quiero ser un hombre" (I want to be a man) a woman and a man change roles in order to understand each other better (the woman even abuses the man sexually in her newly found identity). Another popular radio programme, entitled "Nosotras", is a family programme with a gender focus where violence against women is also sometimes addressed through letters and phone calls from listeners. Some poets and writers to whom the Special Rapporteur listened held that conscience about women in literature is very present, a dialogue on women and culture also.

## V. RECOMMENDATIONS

### A. International level

93. The Special Rapporteur calls on the Government of Cuba to accede as soon as possible to human rights instruments to which it is not yet a party, in particular the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and its two Optional Protocols.

94. The Special Rapporteur urges the Government of Cuba to grant invitations to those thematic mechanisms of the Commission on Human Rights which have requested to visit Cuba, including the Special Rapporteur on freedom of opinion and expression, the Special Rapporteur on torture and the Special Rapporteur on religious intolerance.

95. The Special Rapporteur recommends that the Government of Cuba cooperate with the Office of the High Commissioner for Human Rights with a view to engaging in technical cooperation programmes designed to broaden the scope and to speed up reforms in the field of human rights and fundamental freedoms, in particular in relation to promoting all the human rights of women.

96. The Special Rapporteur calls on the Government of the United States to terminate its economic embargo on Cuba. The Special Rapporteur also holds that the embargo has a negative impact on the economic and social condition of Cuban women.

B. National level

97. The Special Rapporteur urges the Government of Cuba to take comprehensive steps at the legislative and executive levels to deal with the issue of violence against women. The legislature and the executive should be fully involved in devising plans for the eradication of violence against women from Cuban society. This should include a survey of recent changes in legislation and planning strategy adopted by other Latin American countries after the Beijing Conference.

98. The Special Rapporteur urges the Government of Cuba to give the maximum available resources to the Federacion de Mujeres Cubanas which is doing exemplary work with regard to the vindication of the rights of women.

99. The Special Rapporteur calls on the Government of Cuba to adopt special domestic violence legislation, as well as sexual harassment legislation, combining civil and criminal proceedings, in order to enhance the legal protection against violence of women. The Special Rapporteur would like to refer the Government of Cuba to the model legislation on domestic violence elaborated in her report to the Commission on Human Rights contained in document E/CN.4/1996/53/Add.2.

100. The Special Rapporteur recommends that the Government of Cuba engage in a comprehensive programme of sensitizing its police force, its judiciary and its prosecutors with regard to issues of violence against women, with technical cooperation from the United Nations.

101. The Special Rapporteur recommends the dismantling of the special rehabilitation centres set up for prostitutes as the centres violate their due process rights. Other mechanisms that do not violate the rights of the prostitutes would be more appropriate.

102. The Government of Cuba should permit international and national organizations to visit Cuban prisons and detention centres regularly and systematically and to monitor prison conditions.

103. The Special Rapporteur urges FMC to establish shelters for women victims of violence in all provinces.

104. The Special Rapporteur urges the Government of Cuba to respect the political and civil rights of its women by allowing for independent political and civil organizations and by ensuring the independence of the judiciary. The Special Rapporteur also urges the Government of Cuba to stop the practice of arbitrary detention, which is in violation of the standards set out in the International Covenant on Civil and Political Rights.

Notes

[1] Dra. Olga Mesa Castillo, Presidenta de la Sociedad Cubana de Derecho Civil y de Familia, Union Nacional de Juristas de Cuba, "La situación jurídica de la mujer en Cuba de hoy", unpublished.

[2] Lic. Idalmis Veitia Mendez, "Violence hacia la mujer en las relaciones de pareja", in Sexologia y Sociedad, Año 3, No. 7, August 1997.

[3] Ileana Artiles de Leon, "Violencia: un problema social y de salud", in Sexologia y Sociedad, Año 2, No. 8, December 1997.

[4] Dr. Maria-Antonieta Exposito-Lima, Testimonios de Mujeres Cubanas, Coalición de Mujeres Cubano-Americanas, Miami, 1999).

[5] Mike Trickey, "The hookers of Havana", The Ottowa Citizen, 4 May 1998. The term "jinetera" originates from the concept of "jineterismo", which can be construed to mean "a way to solve problems", and is associated with a new kind of entrepreneurship.

[6] Ileana Fuentes, "From pajarito to buscoextranjero.com: exploitation and profitability considerations in Cuban prostitution, 1958 to 1998", Association for the Study of the Cuban Economy, Ninth Annual Conference, 12-14 August 1999.

[7] Human Rights Watch, Cuba's Repressive Machinery - Human Rights Forty Years after the Revolution, New York, June 1999, p. 6

[8] Mauricio Vicent, "Cuba destituye a varios altos cargos vinculados a empresas que promocionan el turismo sexual", El Pais, 11 June 1999.

[9] Ibid.

[10] Human Rights Watch, Cuba's Repressive Machinery. Human Rights Forty Years after the Revolution, New York, June 1999, p. 5.

[11] Ibid., pp. 103-134.

[12] Ibid., p. 3.

[13] Human Rights Watch report, 1999, p. 24.

Annex

SELECTIVE LIST OF PERSONS WITH WHOM THE SPECIAL RAPPORTEUR MET DURING HER MISSION

| | |
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| President Fidel Castro | |
| Mr. Felipe Perez Roque | Minister for Foreign Affairs, Member of the Council of State |
| Ms. Maria de los Angeles Florez | Vice-Minister for Foreign Affairs |
| Ms. Vilma Espin | President, Federacion de Mujeres Cubanas (FMC)<br>Member of the Council of State |
| Mr. Roberto Diaz Sotolongo | Minister of Justice<br>Minister of Public Health |
| Dr. Raul Peres Gonzalez | Vice-Minister of Public Health |
| Lic. Conrado Valladarez Anillo | Vice-Minister of Labour |
| Dr. Rosa Elena Simeon | Minister of Science, Technology and Environment |
| Dr. Juan Escalona Reguerra | Attorney-General |
| Lic. Ruben Remigio Ferro | Chief Justice, People's Supreme Court |
| Dr. Ricardo Alarcon de Quesada | President, National Assembly of People's Power |
| Gen. Jesus Becerra Morciego | Deputy Chief, Cuban Revolutionary Police<br>Instituto Pedro Kouri |
| Ms. Olga Fernandez Rios | Institute of Philosophy |
| Ms. Romelia Pino | Institute of Philosophy |
| Ms. Mayda Alvarez Suarez | Director, Centro/FMC |
| Dr. Clotilde Proveyer | University of Havana |
| Dr. Caridad Navarrete Calderon | Office of the Attorney-General |
| Dr. Concepción Campa Huergo | Director, Instituto "Carlos J. Finlay", Member of the Political Bureau of the Communist Party |

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| Mr. Miguel Sosa | Ministry of Health |
| Dr. Armando Guerra Vilanova | Director, Hospital Galixto-Garcia |
| Ms. Teresa | Director, Prisión de Mujeres del Occidente |
| Ms. Maritza Roleon | Director, Centro Felix Varela |
| Padre Carlos Manuel de Cespedes | Vicario-General |
| Dr. Antonio Radilio Martin Sanchez | National Union of Jurists |
| Mr. Alexis Mergarejo Falero | President, Provincial Assembly, Villa Clara |
| Ms. Arelys Santana Bello | Secretary-General, FMC, Villa Clara |
| Mr. Lazaro Alvarado | Vice-President, Provincial Administrative Council |
| Ms. Natividad Bri | Secretary-General, FMC, Pinar del Rio |
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# INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE

## VIOLENCE AGAINST WOMEN

Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1997/44

Addendum

Report on the mission to Haiti

GE.00-10410 (E)

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## I. INTRODUCTION

1. In follow-up to Commission on Human Rights resolution 1999/77, entitled "Situation of human rights in Haiti", in which the Commission reiterated its call to the Special Rapporteur on violence against women to consider favourably the invitation by the Government of Haiti to visit the country, the Special Rapporteur visited Haiti from 14 to 17 June 1999. The Special Rapporteur's fact-finding focused on the situation of violence against women in Haiti and the available response mechanisms, including the law enforcement and judicial institutions, and on the political rape committed against women during the military regime from 1991 to 1994, in particular.

2. The Special Rapporteur would like to express her appreciation for the cooperation and assistance extended to her by the Government of Haiti and, in particular, by Ms. Nonie Mathieu, Minister for the Status of Women, and her staff, which enabled the Special Rapporteur to meet with representatives of all relevant sectors of society and to obtain the necessary information and documentation to be able to report to the Commission on Human Rights in an objective and impartial manner.

3. The Special Rapporteur is very grateful for the efficient cooperation and support provided by the United Nations Development Programme (UNDP), in particular by Ms. Jaqueline Rips, Gender Specialist, in ensuring a substantively and logistically successful visit. The Special Rapporteur would also like to thank Mr. Julian Harston, Special Representative of the Secretary-General, as well as Ambassador Colin Granderson, Executive Director of the International Civilian Mission in Haiti (MICIVIH), for facilitating the Special Rapporteur's understanding of the prevailing political, economic and social context of Haiti at the time of her visit.

4. During her mission, the Special Rapporteur met with high-level government representatives, including Ms. Geri Préval, First Lady of Haiti, Mr. Jacques Alexis, Prime Minister of Haiti, and Mrs. Frederika Alexis, the Minister for the Status of Women, the Minister for Foreign Affairs, the Minister of Justice, the Minister for Social Affairs and Labour, the Director-General of the National Police and the Ombudsman. The Special Rapporteur also met with representatives of non-governmental and women's organizations and interviewed over 30 women victims of violence. In addition, the Special Rapporteur visited Fort National, a prison in Port-au-Prince, and interviewed women detainees.

5. The Special Rapporteur would like to express her heartfelt thanks to all the women who agreed, despite much emotional stress, to recount their very personal stories to her, so that she could attempt to understand at least some of the suffering they had lived through. The Special Rapporteur was deeply touched by the strong resolve of all the women she met and by their determination to seek justice despite the many obstacles in their way.

## II. GENERAL FINDINGS

6. Haiti remains the poorest and least industrialized nation in the Western hemisphere. It has an economic growth rate of between 1.3 and 2 per cent, with over 70 per cent of the population of 7 million living in extreme poverty, completely out of reach of government and

any services. Six per cent of the population control 66 per cent of the wealth of the country. International financial institutions estimate that if Haiti's economic growth rate were 7 per cent for the next 10 years, 60 per cent of the population would still continue to live in extreme poverty. It has been estimated that some 70 per cent of the population have no dealings with the Haitian State, leading to what has often been described as a "failed State" syndrome.

7. This is the stark reality within which a new political culture of democracy and tolerance is trying to find sustainable roots. Human security is dangerously weak, the average life expectancy at birth is 53.7 years,[1] over half the population lacks access to safe drinking water, health services and sanitation facilities, and violence is rampant in Haiti. After the horrendous manifestations of political violence, including political rape, during the Duvalier dictatorships and most recently from 1991 to 1994, following the military coup d'état, Haitian women continue to suffer from what some interlocutors referred to as "structural violence", targeted at the most vulnerable and poor.

8. In addition, the decay of infrastructure, urban overpopulation and violence are exacerbated by what one writer summarizes as "extreme political polarization, class divisions and a fractured national identity".[2] In 1999, after five years of democratically elected government, Haiti's judicial system is still non-existent, the legislature has not met in two years and security in the country is still largely dependent on the presence of an international police force, which is accompanying the very young and inexperienced Haitian civilian police in its first four years of existence. Economic, political and social progress in Haiti is painstakingly slow and the international community is tired of waiting - donor fatigue has visibly started to manifest itself, with the pending withdrawal of both MICIVIH and the United Nations Civilian Police Mission in Haiti (MIPONUH), as well as of bilateral international presences in the country by the end of 1999. Prospects are bleak, and there is the risk of a potential vacuum resulting in the situation deteriorating further.

9. At the time of writing, the General Assembly was expected to take action on a draft resolution authorizing a new United Nations presence in Haiti, following the termination of the MICIVIH and MIPONUH mandates. Based on the recommendations of a United Nations inter-agency multidisciplinary assessment mission which visited Haiti in October 1999, it was envisaged that the new United Nations presence would contain three substantive pillars, providing support and assistance to the judiciary, to the police and to the protection and promotion of human rights.

## III. SPECIFIC FINDINGS

10. Most of the Special Rapporteur's interlocutors characterized Haiti as an inherently and structurally violent society, in which violence against women manifests itself in all its forms. Others noted that Haitian society does not believe that there is a culture of violence against women in particular but that the general violence affecting women was a result of a culture of repression of those who are vulnerable or inferior. (Women have only recently ceased to be considered as legal minors in Haiti.) In a dire economic situation, with over 80 per cent of the population living in extreme poverty, the violence only increases, resulting in a whole population without human rights. The Minister of Justice himself expressed the view that violations of human rights of women in Haiti are not only incidental but structural. The Minister for Foreign

Affairs recognized that "the situation of women in Haiti is not ideal", but considered that those in political power believed in the human rights of women. At the same time, he acknowledged that because of the lack of legal guarantees for women, their situation was very difficult. The Minister said that new bills for law reform on women's rights could be put forward in cooperation with the Ministry for the Status of Women once Parliament was functional, in January 2000.

11. The Minister for Social Affairs and Labour held that the root cause of the persisting violence against women was largely financial, since economically independent women would not let themselves be beaten without taking action. She estimated that 90 per cent of Haitian women were victims of violence; the situation was exacerbated by the still prevailing machismo culture. Therefore, her Ministry had initiated workshops in all provinces to help increase women's independence. These workshops are intended to teach and enhance women's vocational skills, such as handicraft and arts, in order to decentralize migration and ensure training for women and increase their capacities. Similarly, from 1991 to 1994, at the national penitentiary, the Ministry installed handicraft workshops for women detainees, selling the products on the outside. This revenue, which amounted to up to $50 per week, assisted women detainees in providing for their children from prison.

12. Most of the Special Rapporteur's interlocutors, including the Minister of Justice, recognized the pressing need for judicial reform in order to bring Haitian legislation into harmony with Haiti's obligations under international human rights instruments. The legal framework addressing violence against women is particularly inadequate. A United Nations representative expressed the view that "the lack of a working judicial system is perhaps the greatest violation of human rights in Haiti".

13. At the time of the Special Rapporteur's visit, the new Minister of Justice had only recently assumed his post. Nevertheless, the Special Rapporteur was impressed by the openness of the dialogue she had with the Minister, who clearly had a substantive understanding of the shortcomings of the Haitian judicial system, on the basis of which he formulated a number of strategies for the future to address these problems. The Special Rapporteur hopes that, since her visit, some of the areas of reform mentioned in her discussions with the Minister will have been translated into action.

14. The Minister openly admitted that national legislation, the Civil Code in particular, was discriminatory against women and that he was working with a commission of experts on legal reform in general. For that purpose, he had increased personnel in order to submit 30 bills concerning legislative revision, including a new penal code and a new criminal procedures code, to be presented to the new Parliament, which is to be elected in January 2000. In addition, the Minister was also intending to make proposals for ratifying those international human rights instruments to which Haiti was not yet a party, including the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, and for harmonizing national legislation with Haiti's existing obligations under international law. It was widely recognized that although Haiti had been a party to the Convention on the Elimination of All Forms of Discrimination against Women since 1981 and had ratified the Inter-American Convention on the Prevention,

Punishment and Eradication of Violence against Women (Convention of Belém do Pará) in 1996, the implementation at the national level of Haiti's obligations under international human rights law lagged far behind.

15. The Special Rapporteur is particularly concerned that Haiti has not submitted any reports under the Convention on the Elimination of All Forms of Discrimination against Women, in violation of article 18 thereof, which provides for periodic reporting on the implementation of the Convention. Haiti's initial report was due in 1982 and the subsequent periodic reports were due every four years thereafter, in 1986, 1990, 1994 and 1998. The Special Rapporteur strongly urges the Government of Haiti to cooperate with non-governmental and women's organizations with a view to preparing a consolidated comprehensive report to the Committee on the Elimination of Discrimination against Women without delay.

16. At the national level, the Minister believed that the proposed new legislative framework would enable the justice system to address various aspects of the human rights of women more effectively. In particular, the Ministry of Justice would cooperate with the Ministry for the Status of Women to obtain a more balanced and informed view of the issue of violence against women.

17. While the Minister believed that it was of fundamental importance to modernize the law and create new legal instruments, such law reform must be accompanied by new judicial institutions - the only way to change the system on a more durable basis. The Minister was therefore embarking on a revised training programme for a new generation of judges and was negotiating an increase in salaries for judges in order to attract new qualified people into the justice system. The Minister informed the Special Rapporteur that, at his request, human rights and domestic violence concerns had been integrated into the revised training curriculum for judges. In September 1999, 100 new judges were to be trained on the basis of the revised curriculum. The objective was to train 500 new judges over a five-year period. At the time of the Special Rapporteur's visit, 60 new judges had already entered the system.

18. When the Special Rapporteur inquired about the lack of a family code, the Minister of Justice indicated that he would consider cooperating with the Ministry for the Status of Women with a view to the possible drafting of such a code.

19. The Minister for the Status of Women, established in 1994, has representation in all provinces. In the past, the Ministry also had coordinators at the community level in all provinces, but for lack of financial resources had to abolish those posts. That was seriously affecting the outreach and promotional capacity of the Ministry. In order to combat the culture of non-reporting and tolerance of violence against women, the Ministry for the Status of Women has launched a radio/television campaign denouncing rape as a crime. The Ministry has also, in cooperation with women's organizations, participated in a negotiating committee with parliamentarians (Comité de Négociation avec les Parlementaires), to present new bills to Parliament on rape, sexual abuse, including sexual harassment, and domestic violence, in accordance with Haiti's obligations under international human rights instruments, in particular the Inter-American Convention of Belém do Pará. However, no progress has been made in this direction since the legislature had not been functional for nearly two years at the time of the Special Rapporteur's visit. Nevertheless, the Special Rapporteur considered this dialogue

between women's organizations and parliamentarians encouraging, although law reform has been achieved in only one of the four priority areas identified by the women's organizations (decriminalizing abortion in certain circumstances, legal protection for domestic workers, decriminalizing adultery and redefining rape).

20. The Special Rapporteur was also pleased to note that the women's organizations on the committee, cooperating with the Ministry, had translated the Convention of Belém do Pará into Creole and were actively disseminating it. The Special Rapporteur welcomed the indication that the committee was also coordinating the drafting of Haiti's periodic report under the Convention on the Elimination of All Forms of Discrimination against Women, especially in view of the significant delays in the fulfilment by Haiti of its reporting obligations.

21. The Special Rapporteur was particularly interested in "Projet Plaidoyer", initiated by the committee in cooperation with the Ministry for the Status of Women. This is a pilot project to provide legal assistance and representation to women victims of violence. The project focuses on cases of political rape and violence against women submitted to the Truth and Justice Commission. Lawyers and provincial coordinators of the Ministry cooperate to carry out investigations and research with a view to presenting cases before the courts in the provinces of origin of women victims of violence, with a view to establishing jurisprudence. The Special Rapporteur would like to encourage this initiative strongly and hopes that it has made progress since her visit.

22. At the time of the Special Rapporteur's visit, MIPONUH had 147 international police in the country with a mandate to professionalize the Haitian police force. MIPONUH assisted in setting up the Haitian National Police in 1995 and is now tasked with accompanying the national police in their work. It should be noted that the Haitian police force is just over four years old and, in view of the enormous pressures on it, is very fragile and inexperienced. This is the first time that Haiti has had a national civilian police force; the transition from a mentality of enforcing power and being the instrument of repression to one of serving and protecting has not been easy. The Inspector-General's Office of the national police force is an internal oversight mechanism which carries out internal investigations into abuse of power and violations committed by members of the police force. The internal inquiry, to which MICIVIH contributes by providing information on alleged human rights violations, results in recommendations concerning the sanctions and disciplinary measures to be applied in each case. This administrative decision is, however, not supported by a functioning judicial system, which makes these internal control mechanisms ineffective. The Ombudsman's Office also deals with allegations of police brutality which are communicated to the General Inspector. However, the Ombudsman complained of serious delays in investigations by the General Inspectorate. In addition, since most investigations result in disciplinary action rather than compensation, the Ombudsman's Office is trying to obtain legal representation for the poorest plaintiffs in order to bring cases before the courts for compensation.

23. The Special Rapporteur was particularly pleased about her open and substantive discussion with the Chief of Police, Mr. Pierre Denizé, considering the crucial role that the police play in preventing and addressing violence against women in their communities. At the outset, the Chief of Police pointed out that it was not surprising if a certain price had had to be paid for the hasty training of 5,300 officers in 1994 for four months and their subsequent

deployment across the country without supervision or "encadrement". The Chief of Police also indicated that he was both personally and institutionally aware of the problem of violence against women and of the need for increased police training in this area. He informed the Special Rapporteur that basic police training had recently been extended from four to nine months, based on the approach that the police could and should act as development agents within their communities. The extended training included some components on the human rights of women and on violence against women. The Chief of Police indicated that he intended to cooperate further with the Minister for the Status of Women and women's associations in these areas.

24. The Special Rapporteur's delegation was able to observe one of the training courses on violence against women, conducted by MICIVIH for new police cadets. The course consisted of a useful combination of training concerning the international, regional and national legal instruments protecting against violence against women, and discussions on cultural and traditional aspects of violence against women in Haitian society. The training, provided by a local consultant in cooperation with international MICIVIH staff, evidently stimulated much reflection on a topic which the young, mostly male, police recruits recognized as a long-standing issue affecting Haitian women and girls. The Special Rapporteur commends this training, which also demonstrated the effectiveness of cooperating with a local facilitator familiar with the local traditions and language, as well as with the relevant international standards.

25. The Chief of Police also recognized that, in addition to improved training, the whole system whereby victims could lodge complaints with the police would need to be revised. He was very preoccupied with the follow-up to reporting a crime, including violence against women, which was alleged to be slow and ineffective. With regard to the participation of women in the police force, in June 1999 only just over 7 per cent of police officers were female. The Chief of Police indicated that he was exploring the possibility of quotas for women, while at the same time attempting to improve working conditions for female police officers, including treatment by fellow officers and commanders.

26. In response to an inquiry about the presence of ex-army elements in the police force, the Chief of Police dismissed this as a "useless categorization" since their numbers were not significant and the percentage of human rights violations committed by ex-army elements in the police was zero. What the Chief of Police drew attention to, however, was the fact that the Haitian police force was the product of a society whose historical development was such that it did not recognize nor have any experience of an institutional human rights policy. In his view, the way to break the tradition of impunity was to investigate and publicly address human rights violations within the police force. For that purpose, the internal investigative machinery of the police force, the Inspector-General's Office, had been strengthened, resulting in over 600 officers having been dismissed (some 10 per cent of a police force totalling 6,100 officers in June 1999), of whom approximately 100 had been handed over for prosecution. The Chief of Police considered that the undue delays on the part of the Inspector-General's Office alleged by non-governmental organizations and the Ombudsman's Office were simply caused by overload. With regard to a destructive police raid carried out on the Solidarité femmes haïtiennes (SOFA) clinic, the Chief of Police indicated that the matter was being handled by the Inspector-General.

27. The Chief of Police pointed out the impact of a dysfunctional judiciary on the effectiveness of the police force. It was important for the police to develop a notion of working

for a system that worked effectively, since ineffective or non-existent follow-up by the judiciary of cases submitted by the police led to demoralization and an increase in human rights violations. More constructive and coherent relations between the police and the judiciary were essential. In the same vein, the Chief of Police said that, while he recognized the non-negligible support extended by MICIVIH and MIPONUH to the police, the extension of the "moral eye" and presence of MICIVIH to the judiciary and not only the police would have been useful. The Chief of Police noted positively the preventive role of MIPONUH in accompanying the local police, which would need to be replaced with an alternative mechanism in the case of MICIVIH and MIPONUH withdrawing.

28. As far as the future of the police force was concerned, the Chief of Police pointed out three challenges which would have to be overcome in order to consolidate the role of the civilian police in Haiti: first, "politicization" of the force by politicians using it "as their ticket to ride" must be avoided; second, the existing rampant corruption, including that connected with drugs, needed to be addressed; and third, "gangsterization" (the grouping of members of the force in gangs) had to be battled. The Special Rapporteur calls on all members of the police force to meet these challenges, with a view to establishing a respected tradition of civilian police in the country.

29. The Special Rapporteur met with the Ombudsman, whose post was established in 1997. The Ombudsman's mandate is to protect all citizens from violations by government officials. Most of the cases submitted to the Ombudsman concern allegations against the police (of which 25 per cent are allegations of police brutality). His Office is also looking into the possibility of providing legal assistance to prisoners without lawyers. Furthermore, the Ombudsman expressed concern at the situation of women in Haiti and indicated that he would like to have a specialist within this Office to deal with questions relating to rape, sexual harassment and other violations of the human rights of women. He said that, as a result of lobbying by women's organizations, he was intending to make contact with the Ministry of Justice to discuss how to assist women victims of political rape. In this context, the Special Rapporteur noted with concern the serious underfunding of the Office of the Ombudsman, both human and financial, despite some assistance from UNDP and bilateral donors. The Office of the Ombudsman had, at the time of the visit, no representation outside Port-au-Prince. The Special Rapporteur believes that strengthening the Office of the Ombudsman and allowing cases to be brought to the Office could serve as a catalytic factor in addressing the situation of extreme violence ingrained in Haitian society. The Ombudsman indicated that for his Office to play a more meaningful role in the promotion and protection of human rights, his staff of seven would need to be increased at least to 25 staff. Provincial representation for the Ombudsman in all provinces would be of the utmost importance in order to reach the rural population, who are mostly illiterate and do not have the money to travel to the Office of the Ombudsman to deposit their allegations.

30. The Ombudsman also indicated to the Special Rapporteur that, following monthly demonstrations by women's organizations to bring their concerns to the attention of the Government, he had met with the Prime Minister in the week before the Special Rapporteur's visit in June 1999. During this visit, the Prime Minister had expressed his willingness to receive demands from women's organizations with a view to working together with the Ombudsman to find solutions for those demands. The Ombudsman therefore had decided to convene a committee with all the women's groups to discuss strategies for prioritizing their concerns. The

Special Rapporteur considers this an important initiative and hopes that progress has been achieved since her visit and that a dialogue between the women's organizations and the Government is ongoing. The Special Rapporteur would also like to endorse strongly the recommendations relating to the human rights of women made in the Ombudsman's first report to the President and Prime Minister, including

(a) The establishment within each ministry of a committee on sexual harassment mandated to discuss all problems faced in the workplace and to receive individual complaints of sexual harassment;

(b) The establishment within each ministry of a day-care centre for women employees with young children;

(c) The development of coordination between the Ministry for the Status of Women, the Ministry of Justice and the National Police to elaborate a strategy against violence against women (in this connection, the Special Rapporteur suggested the inclusion of the Ministry of Social Affairs and Labour, and the Ministry of Health);

(d) The establishment of an inter-ministerial commission to investigate and remedy salary discrimination against women.

## A. Domestic violence

31. In view of the inadequate legal guarantees to combat violence against women, it is not surprising that no special domestic violence legislation exists in Haiti. Violence against women is punished under general laws against assault and battery, depending on the circumstances of attack and the degree of injury to the victim. [3] The Minister for the Status of Women said that domestic violence was quite prevalent in Haiti, mainly taking the form of battering and psychological violence. While there were no systematic and updated statistics on violence against women, the Ministry for the Status of Women had registered 2,000 cases of physical violence committed between November 1994 and June 1999 (in 1,800 of which, the perpetrators were spouses or partners). A study of 1,705 women undertaken by the Centre Haïtien de Recherches et d'Actions pour la Promotion Féminine (CHREPROF) in 1996 showed that in 36 per cent of cases, violence against women was perpetrated by their partners and that the most common forms of violence were sexual (37 per cent), physical (33 per cent) and sexual violence and abuse (24 per cent). [4] The study also confirmed that the use of violence was not related to level of education, religious beliefs, or economic or marital status, but was prevalent in all strata of Haitian society. In fact, the Special Rapporteur learned that 80 per cent of the men interviewed in the same study considered that violence against women was strictly a family matter, and attempted to justify such violence in cases where women showed disrespect for or disobedience to their partners.

32. The Special Rapporteur noted with particular concern that there is also no family code in Haitian legislation. The lack of adequate legislation is exacerbated by and/or results in a culture of non-reporting and of acceptance of violence against women as a matter of general principle. The study mentioned above held that 66 per cent of women victims never reported acts of violence for fear of reprisals and societal prejudice, as well as for lack of adequate legal

mechanisms and support structures.[5] MICIVIH confirmed that the police were not responsive to the concerns of women victims of violence. The Special Rapporteur was encouraged to learn that the law reform proposed by the Minister of Justice also included consideration of how to approach domestic violence more effectively in law. The Committee for Negotiating with Parliamentarians, a coalition of 23 women's organizations working with the Ministry for the Status of Women, is also concerned that marital rape is not recognized as a crime in law, and that laws governing divorce and adultery are discriminatory against women, always assigning the burden of proof to women.

33. Upon inquiring about services for victims provided by the Ministry of Social Affairs and Labour, the Special Rapporteur was informed that the Ministry operates a telephone hotline for mistreated children, most frequently girls. These girls are then taken to training centres operated by the Ministry. There are also medical centres for children, staffed by psychologists and social workers. The Special Rapporteur was concerned that such assistance for victims of domestic and other violence seemed to be mainly targeted at children. Although the CHREPROF study showed that 38 per cent of violence against women is targeted at girls between the ages of 10 and 18 years, the Special Rapporteur noted with serious concern that the Minister for Social Affairs informed her that there are no shelters funded by the Government for women victims of violence. There is one shelter in Port-au-Prince operated by a non-governmental organization, KAYFANM. While the Minister recognized the need for a shelter, she considered that it was needed mainly for under-age mothers aged between 15 and 17 years, who apparently suffer most from family violence in Haiti. Similarly, the Special Rapporteur learned that there are no rehabilitation programmes for women and girls in prostitution, and that plans for establishing a centre for training women in prostitution in alternative income-generating skills had not materialized for lack of funds. Financial difficulties have also led to the representation of the Ministry in the provinces being cut and the Office of Family Protection within the Ministry now only has 15 trained social workers. The Minister also indicated that, for lack of resources, the Ministry was in no position to implement any preventive programmes with respect to violence against women.

34. While the Special Rapporteur recognizes the lack of resources to be a significant constraint on developing new programmes and services, she regrets that the Ministry for Social Affairs and Labour is seemingly channelling all available resources towards training programmes and workshops for women, at the expense of social services for victims, which are of crucial importance. The Special Rapporteur calls on the Minister for Social Affairs and Labour to reconsider spending priorities with a view to reorienting funds towards the provision of social services, including shelters, for women victims of violence.

35. In this connection, the Special Rapporteur was appraised of an initiative undertaken by Ms. Frédérika Alexis, the Prime Minister's wife, namely, providing services for women victims of violence. On the basis of research carried out in Port-au-Prince in 1997 and 1998, Ms. Alexis was able to confirm that the incidence of violence against women is relatively high and that women victims of violence generally are afraid of reporting it to the police. In 1998, she set up an office where 12 employees, including two doctors, two lawyers, two social workers and a priest, have provided medical, legal and social assistance to 200 women victims, 50 of whose cases were reported to be serious, needing immediate intervention. In order to be able to attend to women who need immediate assistance, Ms. Alexis has developed a proposal to establish a

rehabilitation and reintegration shelter for women victims, for which she was raising funds. It is envisaged that the "centre d'hébergement" should have buses at its disposal to transport women and children in need to the shelter for an undetermined period, where they could avail themselves of professional assistance, take part in rehabilitation and reintegration programmes and receive start-up financial aid on a reimbursable basis. The Special Rapporteur encourages donors to consider funding micro-projects at the grass-roots level such as this shelter project, since this might be the most direct way of ensuring that aid reaches the women who need it most.

## B. Rape, sexual abuse and harassment

36. The Minister for the Status of Women indicated that rape was a frequent phenomenon, not only in Port-au-Prince but increasingly also in the provinces. In one recent case of rape of minors in the Plateau Central region, the perpetrators went unpunished until the Minister herself took up the issue with the Minister of Justice. The phenomenon of "zenglendos", or thugs, breaking into houses at any time, raping and beating the women, started during the Cedras regime as a form of political pressure but has now become a common practice of criminal gangs, terrorizing the entire population.

37. While rape is a crime under the Haitian Penal Code (art. 229), it is not recognized as a serious crime because no jury trial is required. Consequently, cases of rape are mostly settled financially out of court. For example, if a girl is raped by her teacher, it is generally expected that the rapist marry the victim and no criminal case is brought against the perpetrator. In addition, as one researcher points out, rape is never defined in the law but classified among crimes against morals ("atteintes aux bonnes moeurs"). Consequently, the rape of a woman who is not a virgin has been attributed less importance by courts than that of a virgin. [6]

38. Many of the Special Rapporteur's interlocutors raised the issue of teenage pregnancies as a result of rape and sexual harassment in schools, as being a serious problem in Haiti. She was told that if a girl was raped/impregnated by her teacher or director, the pregnant girl would be expelled from school, in serious violation of her right to education. Another serious form of violence against women that came to the Special Rapporteur's attention was the violence and sexual abuse committed against young female domestic workers. Rural families in particular, often send their teenage daughters to work as domestic help in households ("restavek"), thus contributing to the family income. These young girls are frequently at the mercy of their employers and, reportedly, the incidence of physical and sexual violence, resulting in pregnancy, are high. Between November 1994 and June 1999, the Ministry for the Status of Women registered 900 cases of adult women and 1,500 cases of girls between the ages of 6 and 15 years victims of sexual abuse and aggression. The Special Rapporteur is seriously worried about the disproportionately high numbers of young girls who are the victims of violence. The Ministry for the Status of Women informed the Special Rapporteur that it had been trying to assist these young women and girls in difficult situations by providing them with the bus fare to return home and by facilitating their return to a school near their home.

39. In the same period (November 1994-June 1999), the Ministry had registered 500 cases of sexual harassment against women. The Minister for the Status of Women explained, however, that sexual harassment was not publicly spoken about and hardly considered a form of violence against women. Nevertheless, according to the Ministry, women's groups were including this issue in their public awareness campaigns in order to encourage women to denounce and fight against sexual harassment. The Special Rapporteur was pleased to hear that the Ministry for Social Affairs and Labour was working towards including provisions against sexual harassment in the internal regulations of enterprises and businesses, and that the Ministry was participating in the drafting committee that would propose revised legislation to Parliament.

40. Upon inquiring about services for victims, the Special Rapporteur was informed by the Minister for the Status of Women that the judicial and political institutions were simply overburdened with compensation claims and requests for victim assistance, since there were so many women victims of violence, especially in the aftermath of the coup d'état. The Minister said that in order to extend effective victim assistance, the Ministry would have to be substantively strengthened. In this context, the Minister indicated that her Ministry was mandated to receive cases of violence against women through the Committee on Violence against Women, established within the Ministry. However, owing to lack of personnel and lack of adequate training in processing cases, the Ministry has not been able to perform those tasks. The Minister mentioned that she did not even have one lawyer or legal expert at the Ministry, but relied on the help of two law graduates.

## C. Women in detention

41. At the time of the Special Rapporteur's visit, Haiti had a total of 3,500 prisoners. There are, however, no women's prisons in Haiti. Women are detained in mixed facilities, with men and children, not even necessarily in separate living quarters, with the exception of Fort National, a prison in Port-au-Prince. When the Special Rapporteur inquired into the lack of women's prisons, the Minister of Justice explained that, in 1995, President Aristide had provisionally separated all women and children prisoners in Fort National, with a view to building a women's prison. However, in 1999, those provisional measures were still in place. The Minister of Justice informed the Special Rapporteur that he had created a commission to study the situation of women in prison. As an immediate result of this investigation, 30 women detainees had been released. The study is intended to clearly identify the situation of all women imprisoned in Haiti, especially considering that 90 per cent of them are in preventive detention (pending sentencing) and only 10 per cent have actually been sentenced to deprivation of liberty. This statistic, according to the Minister of Justice, points to a deeper fault in the system, namely the traditional way of carrying out investigations by which the alleged perpetrators were sometimes sentenced before the investigation was terminated. The Minister stated his intention to introduce change, making "prison an exception, not a generality".

42. The overcrowding and inadequate conditions in detention in Haiti are exacerbated by the fact that in the entire country there are no prisons by definition, there are only detention centres or penitentiary facilities - therefore, the rehabilitation and reintegration aspect is lacking. The Director of Fort National, which the Special Rapporteur visited, emphasized that Fort National was not a prison but simply a barracks put to other use, which meant that it had not been built for the purposes of prolonged detention. The Minister of Justice indicated that there were plans to

integrate a rehabilitation and reintegration programme, valued at 3 to 4 million dollars, into the prison system. However, there was a serious lack of funding, especially because donors preferred to provide expertise and human resources rather than investing in or contributing to the building of institutional structures. The Minister advocated a comprehensive approach to assistance which would combine the organization of training courses and seminars with the provision of financial support for infrastructure.

43. At the time of the Special Rapporteur's visit to Fort National prison in Port-au-Prince, in June 1999, 116 prisoners were detained there, of whom 71 were women. The Special Rapporteur noted with concern that only 4 out of 71 women detainees had been sentenced; many had been held in pre-trial detention for up to two years. There were also 11 girls under 18 years of age, of whom two had been sentenced, living in the same cell as the women. In addition, one cell at Fort National was empty following an attempted break-out and riots, and a third cell held boys under 18 years of age. The Special Rapporteur would like to recall the United Nations Standard Minimum Rules for the Treatment of Prisoners, rule 8 (d) of which states that young prisoners shall be kept separate from adults. While recognizing the efforts made by the new prison management at Fort National, the Special Rapporteur observed especially that the conditions of the living and washing quarters were seriously substandard and overcrowded, not surprisingly with all 82 female prisoners living in a single cell with no privacy, dividing walls or curtains.

44. The Special Rapporteur notes that there are both female and male guards at Fort National, while recalling rule 53 (3) of the United Nations Standard Minimum Rules for the Treatment of Prisoners, which stipulates that women prisoners shall be attended and supervised only by women officers. The Special Rapporteur was informed of the case of a 15-year old girl, who had entered prison in Cap Haitien as a virgin, becoming pregnant. MICIVIH took over her case, but upon delivery of her baby, she fled the hospital. In this connection, the Special Rapporteur welcomed the announcement by the Minister of Justice that he was planning to recruit 100 female guards to work exclusively with the female prison population. The Special Rapporteur calls on the Government of Haiti to allocate resources to make it possible for the United Nations Standard Minimum Rules for the Treatment of Prisoners to be fully implemented, with a view to ensuring the safety and security of and adequate living conditions for the prison population.

45. UNDP informed the Special Rapporteur of a project aimed at rehabilitating the Haitian penitentiary system. The project, financed mainly by the Government of Canada and USAID, addressed issues such as separating men, women and children, overpopulation and the creation of a mechanism for tracking the prison population. At the time of the visit, there were 15 detention centres, all with functional records of their population. The Special Rapporteur noted that this was one of the most tangibly successful projects implemented by the United Nations in cooperation with MICIVIH. However, it focused mainly on the Central Prison for men, whereas the Special Rapporteur was concerned that UNDP, in cooperation with the Ministry for the Status of Women, was facing serious difficulties in obtaining funding for its project targeting female detainees.

46. The Special Rapporteur also echoed concerns expressed in a MICIVIH study on the rights of women and minors in detention, namely that women detained in any other detention

facilities share living quarters with male detainees, in complete contravention of international prison standards, and are therefore increasingly vulnerable to sexual abuse and violence from male inmates.[7] On the other hand, when women detainees are transported to the only detention facility exclusively housing women and minors, in Port-au-Prince, they are far away from their families, reinforcing the family separation factor.

47. The Special Rapporteur was informed that the Minister for Women had initiated an awareness-raising activity at Fort National on Mother's Day in May 1999 which resulted in the liberation of 30 women detainees by decree of the Minister of Justice.

## D. Political rape

The testimony of Immacula (aged 33)

48. On the night of 16 October 1991, Immacula was at home with her husband and six children, when a number of masked men with heavy weapons broke through the fence and invaded her home. The men put Immacula on the floor, handcuffed her husband, and then three of them raped her, hit her in the face and brutalized her, in front of her husband and children. The youngest child who is six years old now, still repeats the story of what happened that night. Because her husband supported Aristide, they were put into prison for six months, after which they had to live in hiding. Once, when Immacula and her family were temporarily staying with her sister-in-law, her persecutors followed her into the house, raped her again and also raped her sister-in-law. Her sister-in-law died as a result of injuries sustained from the brutal rape and Immacula has since had to take care of her sister-in-law's children, as well as of her own. She has not received any assistance or compensation for the violence suffered.

The testimony of Saintanie (aged 42)

49. Saintanie's husband was a militant fighter for democracy. On 23 September 1993, his name was mentioned in a radio broadcast, along with other militant pro-democracy activists. That night, six masked men in black clothes forced their way into their house, three of the men took her husband with them and three of them raped Saintanie. Her six children were beaten with the guns. After the incident, Saintanie and her children could no longer stay in their house but fled to another neighbourhood. They went to a refuge for Aristide supporters where they were given medical and psychological help, as well as some financial assistance for a new place to live. Saintanie still feels victimized every day and is disillusioned because, despite President Aristide's return, nothing happened. Not even the recommendations of the Truth and Justice Commission have been implemented. Her husband never returned. Now Saintanie has filed a case before the courts and is awaiting an outcome. She is not hopeful.

The testimony of Ellesibles (aged 35)

50. In 1990, Ellesibles belonged to a group of clandestine militants who came together again after the coup d'état to support Aristide. On 2 July 1994, four men broke into her house, dragged her and her mother out of the house, forced her to the ground under a tree, beat her and raped her - in front of her mother. The men had been looking for the coordinator of her group. He came to get her after the incident and took her to a hiding place for victims of political rape. She

received medical and legal aid, along with 150 other members of her group, of whom 60 were victims of rape. Ellesibles has lived in the same hide-out since 1994, but when the Special Rapporteur interviewed her she was desperate because her safe haven was about to be closed down for lack of resources. She has no home and no job. She broke down in tears, saying "All this hurts, it hurts a lot".

The testimony of Esperance (aged 28)

51. On 13 February 1993, a group of armed men came into the house where Esperance was living with her parents, who were political activists. They created disorder in the house, raped her 19-year-old sister in front of her, beat her and her brothers, beat her mother, beat her father and took him away. Esperance has not seen her father again. Esperance fled to a southern province. When her mother died in 1995, traumatized by the loss of her husband, Esperance had to leave school to take care of her younger siblings. Since they had no permanent place to live, her family is now dispersed, the siblings living temporarily wherever they find a place. Esperance filed a complaint with the Truth and Justice Commission when she heard about it. Nothing happened concerning her case. Her sister still suffers from serious medical conditions as a consequence of the rape ("le corps se souvient" - the body remembers).

The testimony of Yvette (aged 29)

52. On 4 February 1994, Yvette went with other women to the market, as she did every day, to sell her merchandise, although the Front révolutionnaire pour l'avancement et le progrés du pays (FRAPP) had issued a call to strike. Before long, armed men attacked them, destroyed their merchandise and beat them. As Yvette said "les armes ont chantés" ("the guns were singing"). Later that night, men in army uniform with masks entered her house and started carrying away her property, passing it to a sergeant who was waiting outside. The masked men raped Yvette and beat her sister because she had her period and they did not rape her. In the aftermath of the incident, Yvette and her sister received medical, psychological and housing assistance from SOFA. However, since then, they have been moving from place to place, too afraid to go back to their house because the perpetrators of the violations are still free. Yvette is a petitioner of a collective complaint filed by a group of women victims of political rape. They are still awaiting the outcome.

The testimony of Suzette (aged 35)

53. Suzette's boyfriend was a militant fighter for democracy and was out in the streets with his colleagues on the night of 20 October 1993. That night, six armed masked men forced their way into Suzette's home. They hit her, beat her, kicked her in the stomach with their army boots and finally three of them raped her - Suzette was seven months pregnant. They asked questions about her boyfriend. One week later, Suzette had contractions and heavy bleeding. Although a doctor did his best to save the child, Suzette's baby was born dead. Suzette received medical care and assistance from SOFA but she contracted sexually transmitted diseases and suffers from recurrent typhoid and malaria. She has moved in with her mother for fear of returning home.

The testimony of Marie-Francoise (aged 35)

54. Marie-Francoise, then seven months pregnant, was at home with her husband, her daughter and her brother on the evening of 13 August 1994, when there was a blackout in her district of Port-au-Prince. With her family, she went out into the garden to get fresh air, when a white van pulled up in the street next to them. Ten or eleven masked men jumped out and shoved them back into their house. They shot her brother point-blank and three of the men raped Marie-Francoise despite the fact that she was in an advanced stage of pregnancy. They hit her on the head. Her husband disappeared that night and never returned. Despite the trauma, Marie-Francoise had a healthy child. However, her head still hurts from the beatings she sustained. On the basis of a medical certificate documenting her rape, Marie-Francoise filed a collective complaint before the Truth and Justice Commission, but no action has been taken since the publication of the Commission's recommendations.

55. The voices of Immacula, Saintanie, Ellesibles, Esperance, Yvette, Suzette and Marie-Francoise are but a few. During her mission, the Special Rapporteur interviewed 32 women victims of political rape whose stories are all equally shocking, brutal and inhuman and who represent countless other women in Haiti who have experienced the same horror. The pattern of violence is the same: the victims were either themselves or were relatives of pro-democracy supporters; the incidents occurred in the evening or late at night at the houses of the victims; the attackers were masked armed men in groups of between 3 and 12, sometimes wearing military uniform, who ransacked the houses of the victims, beat them, killed them and raped them; then abducted the men of the family and left the victims to fend for themselves, sometimes returning with more threats and intimidation.

56. The exact number of women victims of political rape, which was most common in the period 1991-1994, is not known. However, between January and May 1994 alone, MICIVIH reported 66 instances of rape[8] and an investigation by Human Rights Watch in 1994 reported "a campaign of systematic violations of human rights that clearly includes rape".[9] The Truth and Justice Commission documented 140 cases of political rape but estimated that, in view of non-reporting and other circumstances, the actual incidence of political rape could be nearly 12 times as high, that is to say close to 1,680 cases.[10]

57. The women victims of political rape suffered incredible violence during the Cedras regime, yet five years later, their situation has not changed. They suffer from psychological trauma, and post-traumatic syndromes including latent depression; they suffer from serious medical conditions, including sexually transmitted diseases and HIV/AIDS infection, caused by multiple rape and brutality; their children remember and are traumatized; their husbands were killed or have left them; they do not have a permanent place to live; they do not have jobs; their merchandise was looted and stolen; they do not have enough food or medical assistance; nor do they have money to pay their children's school fees; but worst of all, the perpetrators of these crimes are still haunting them and are roaming around freely - justice has never been rendered and the women of Haiti are forced to live with the past every day of their lives.

58. The Truth and Reconciliation Commission was mandated in article 3 of the Presidential Decree establishing it "to pay special attention to violations of human rights committed by individuals or groups of individuals, notably against women victims or attacks of a

sexual nature committed for political ends".[11] In its special investigation of violence against women contained in its report published in 1996, the Commission found that, since 1991, numerous cases of rape had been detected which were part of a systematic political strategy in the context of general intimidation and repression against those opposing the coup d'état. The Commission held that such rape was undoubtedly committed for political ends, clearly manifested by the perpetrators in their threats, insults and accusations against the victims.[12] The Commission found that rape constituted a political weapon, an instrument to intimidate and punish women as a result of their direct or indirect links with those opposing the coup d'état. The Commission concluded that since the rapes and sexual violence committed against women were perpetrated by officials and agents of the State (members of the army, section chiefs, members of paramilitary forces such as the Front révolutionnaire armé pour le progrès d'Haiti/FRAPH and "zenglendos", all of whom were operating at the instigation of the army, supported by the army or with the army's consent) for political purposes, these acts were in clear violation of Haiti's obligations under article 2.1 of the International Covenant on Civil and Political Rights and article 1 of the American Convention on Human Rights. (Article 2.1 of the ICCPR stipulates that "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as... political or other opinion". Article 1 of the American Convention has a similar provision.)

59. The Commission also found the acts of political rape akin to cruel, inhuman and degrading treatment, in violation of article 5 of the Universal Declaration of Human Rights and article 5.2 of the American Convention. Furthermore, the Commission argued that by virtue of their nature the acts of political rape committed could be considered akin to torture since customary international law had developed to consider rape as torture when committed for political ends. Consequently, although Haiti is not a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Commission found these acts to be in violation of Haiti's obligations under customary international law.[13] Finally, the Commission held that the acts of rape and sexual violence perpetrated against women by officials and agents of the State for political purposes could be characterized as crimes against humanity, by virtue of their gross and systematic character and of constituting torture in accordance with the argument set out above.

60. On the basis of these substantive legal arguments, the Commission made a number of constructive and progressive recommendations, which the Special Rapporteur fully endorses:

(i) In the Haitian Penal Code, rape should be defined as an attack on the victim's physical integrity and well-being, as opposed to honour.

(ii) The rules governing the medical certification of rape should be revised to extend competence to other health professionals in certain remote areas where there are no medical doctors.

(iii) Forensic science should be taught and should be once again officially applied.

(iv) Training and education programmes should be developed for all persons who are in contact with and provide services for women victims of violence, including judges and law enforcement officials.

(v) Specialized services for women victims of violence should be established, including counselling, rehabilitation and reintegration programmes.

(vi) Awareness-raising campaigns for the public should be developed.

(vii) Judicial proceedings should be instituted against the alleged perpetrators of acts of rape noted in the report of the Commission with a view to due punishment of those found guilty and compensation for the victims.

(viii) Haiti should ratify, inter alia, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention of Belem do Para.[14]

61. The Special Rapporteur is seriously concerned that the substantive recommendations made by the Truth and Justice Commission in the light of its comprehensive factual and legal analysis of the acts of political rape have not been implemented. In her dialogue with the Minister of Justice, the Special Rapporteur was pleased to learn that the Minister had established a follow-up committee to report on the implementation of the Committee's recommendations. The follow-up committee had recommended the establishment of a national commission of reparations with three objectives: to formulate a compensation policy; to assist in the reintegration and rehabilitation of victims; and to provide assistance in the legal procedures to bring perpetrators to justice. The Minister was preparing a bill for the President's approval, with the aim of establishing the national commission in July 1999. The Special Rapporteur noted that the Ministry for the Status of Women would be represented on the national commission.

## IV. THE UNITED NATIONS SYSTEM, AND NON-GOVERNMENTAL AND WOMEN'S ORGANIZATIONS

62. The Special Rapporteur was extremely impressed and moved by the work of Haitian NGOs and human rights organizations. They have kept the issue of violence against women alive and they appeared to be extremely active in bringing victims to the forefront and in giving them courage to tell their stories. Many of the victims who spoke to the Special Rapporteur came because of the faith instilled in them by women's NGOs and human rights organizations.

63. Many of the NGOs and women's groups with whom the Special Rapporteur met, represent and work with women victims of violence or are composed of women themselves victims of violence who have seen the need to be organized in their common striving for justice. However, lack of proof and documentation, including medical certificates for rape victims, as well as the dire shortage of funding is seriously hindering their work. Nevertheless, the Special Rapporteur was impressed with the many important initiatives that these groups have undertaken for women victims of violence, in the absence of any governmental support or legal compensation.

64. In November 1997, Haitian women's associations mobilized as a result of the lack of government action to bring to justice the perpetrators of political rape and to implement the recommendations of the Truth and Justice Commission, and held an International Tribunal against Violence against Women in Haiti. The Tribunal heard testimonies of victims of violence and made recommendations addressing domestic violence, sexual violence, political violence and violence against handicapped women. The international panel of judges noted serious shortcomings in the judicial system, police practices and ineffectiveness, and the lack of initiative and shortcomings of the social and public health services. The panel recommended that the Government cooperate with women's organizations in drafting comprehensive legislation to eliminate violence against women. The panel also recommended, inter alia:

> Reforms to the criminal justice system, including the establishment of a women's police unit composed of female officers to receive complaints and conduct investigations on violence against women;
>
> Modifications to judicial proceedings, including the provision of safeguards for plaintiffs and witnesses in trials;
>
> Establishing shelters for women victims of violence;
>
> Developing education programmes in schools to eliminate gender-stereotyping and to institute human rights education and sexual education;
>
> Legalizing abortion in cases of rape, incest and danger to women's health;
>
> Amending the Civil Code to recognize common law marriage and introduce adultery as a motive for divorce.[15]

65. KAYFANM has a full-time office working with women victims of violence, receiving complaints of violations and providing medical, legal and psychological assistance. The organization has one lawyer and works together with other associations or private clinics on medical care. KAYFANM also provides up to three days of temporary shelter for women victims of violence but shelter space is insufficient to meet demand. SOFA is a women's organization that runs a clinic for women victims. The Special Rapporteur's delegation visited this clinic and interviewed women victims of violence. ENFOFANM publishes a monthly newspaper Ayiti Fanm, which has reported on all known cases of violence against women believed to be committed by the military following the coup d'état, including cases of political rape. FANMDJAM has established a school for 200 children of women victims of rape, since many of these women cannot afford school fees for their children.

66. However, when the Special Rapporteur inquired what the priorities of Haitian women's organizations are, they all replied unequivocally: to seek justice for the victims of political violence. In fact, most women's groups filed all known cases of political violence against women before the courts after the return to constitutional order in Haiti, requesting judicial

proceedings and compensation. Many organizations indicated that, more than individual compensation, the women victims and their representatives are seeking a political response from the Government.

67. In discussions, the Special Rapporteur was also appraised of other concerns. The members of the Committee on Negotiations with Parliament held that the assistance extended by the international community with respect to violence against women was completely lacking in coordination and programmes had been implemented without the Government or the local women's groups being consulted. They were of the opinion that the United Nations inter-agency campaign to eliminate violence against women ("Yon vi kote vyolans pa ladan, se dwa nou tout") had failed for lack of consultation with and involvement of local organizations. In addition, the representatives cautioned the Special Rapporteur that the United Nations agencies in the country believed in the myth that the local women's groups were not working together. At a meeting of the United Nations Inter-Agency Group on Gender, the United Nations agencies working on the campaign to eliminate violence against women indicated to the Special Rapporteur that, in fact, many non-governmental organizations had not wanted to cooperate with them, largely as a result of the United Nations failed efforts to mediate between international and grass-roots NGOs to secure their common participation in the campaign. The Gender Group, however, assured the Special Rapporteur of its strong willingness to work more closely with national NGOs in the future, in particular on the campaign to eliminate violence against women. The United Nations agencies fully recognized that without substantive cooperation and support from Haitian women's groups the campaign would neither be meaningful nor effective.

68. While the Special Rapporteur fully supports the involvement of local and national organizations in programmes financed and implemented by international partners, she was able to detect a certain rivalry between the so-called more "intellectual" women's organizations and the grass-roots activist groups. In view of the very scarce resources available in the country, in particular for programmes targeting women's rights, the Special Rapporteur calls on all Haitian women's organizations to work together towards the same goals and to work with the international community, since there is no alternative if justice is to be achieved.

69. During her visit, the Special Rapporteur was able to participate in a meeting of the Inter-Agency Group on Gender, in which the United Nations agencies present in Haiti shared with her information about programmes they were implementing relating to violence against women. MICIVIH representatives informed the Special Rapporteur that since 1995 it had included human rights of women and violence against women in its programmes. MICIVIH in Port-au-Prince and its representatives in nine provinces have since then worked with non-governmental organizations and the media on radio spots, television programmes and meetings, as well as providing financial assistance to some organizations.

70. Since the beginning of 1999, MICIVIH has been broadcasting nationwide two radio programmes debating changes in current laws, including provisions relating to adultery and to the perception of rape in the criminal justice system. In addition to providing specialized training for police cadets concerning violence against women, and to supporting the Office of the Ombudsman, MICIVIH also appraised the Special Rapporteur of the inclusion of a violence against women component in a joint MICIVIH/SEA (Secrétaire d'État pour l'Alphabétisation) literacy project. Under this project it is intended to train 600 literacy monitors in the nine

departments of the country by the end of 1999, through a series of two-day seminars. The Special Rapporteur commends the inclusion of violence against women in this project, particularly for its outreach capacity to the provinces. Furthermore, the MICIVIH bases in all nine departments of Haiti conducted weekly activities with women's organizations, addressing women's rights and violence against women in radio programmes, training sessions and community discussions. Cultural activities and theatre festivals in Jérémie and Cap Haitien also focused on women's rights and violence against women.

71. MICIVIH had started discussions with the Ministry of Education to attempt to have human rights education included in the curriculum in primary and secondary schools, a project which regrettably was still pending two years after being initiated.

72. The United Nations Population Fund (UNFPA) is training the police force on reproductive health, including violence against women, family planning and sexually transmitted diseases. Such training is considered particularly important in view of the very high prevalence of HIV/AIDS among the force (20 per cent). In fact, the police force is considered a risk group in the context of HIV/AIDS (the prevalence rate amongst the general population is 6 per cent in rural areas and 10 per cent in urban settings). The UNFPA police training focuses on changing the image of the police and among the police so that they are perceived as agents of change in their communities. Consequently, they need to modify their own behaviour patterns. UNESCO has also participated with UNFPA and the Ministry of Education in developing a reproductive health curriculum for schools.

73. The United Nations Children's Fund (UNICEF) has been working with Governments and non-governmental organizations in proposing revisions to legislation relating to women's and children's rights. UNICEF also took part in a community-level campaign to empower communities to address violence against women in cooperation with local non-governmental organizations. UNICEF has also been approached by the police to assist and cooperate in addressing the plight of children in especially difficult circumstances. The International Organization for Migration (IOM) indicated that they were willing to contribute to the inter-agency media campaign, as well as to consider developing a programme on violence against women in relation to the forced repatriation and reintegration of women into society.

## V. RECOMMENDATIONS

### A. International level

74. The Special Rapporteur urges that the new United Nations presence in Haiti continue the functions of MIPONUH in accompanying, monitoring and guiding the national police force in its work, and, in addition, to provide continuity in the police training carried out by MICIVIH, on the human rights of and violence against women, as an essential contribution to increasing reporting on cases of violence against women, with a view to combating the phenomenon.

75. The Special Rapporteur recommends that international multilateral and bilateral development assistance funds should not be earmarked only for the provision of expertise and human resources, since many funds remain unused because of the lack of institutional structures to implement projects and programmes.

B. National level

76. The Special Rapporteur urges the Government of Haiti to ratify without delay the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

77. The Special Rapporteur calls on the Government of Haiti to comply with its existing obligations under international human rights law by harmonizing all relevant provisions of Haitian national law with international standards and by complying with its obligations to report to the treaty-monitoring bodies. In this respect, the Special Rapporteur strongly urges the Government of Haiti to cooperate with non-governmental and women's organizations with a view to preparing a consolidated comprehensive report to the Committee on the Elimination of Discrimination against Women without delay.

78. The Special Rapporteur calls on the Government of Haiti to implement the recommendations of the Truth and Reconciliation Commission and to take steps to punish the perpetrators and compensate the victims. Political rape should be condemned in the most definitive terms by the highest authorities in the land.

79. The Special Rapporteur calls on the Government of Haiti to amend its laws on rape to meet international standards, and to introduce new legislation with regard to domestic violence and sexual harassment.

80. The Special Rapporteur urges the Government of Haiti, NGOs and United Nations agencies to carry out research and come up with empirical findings on incidents of violence against women in order to assess the real nature of the problem facing Haitian society.

81. The Special Rapporteur urges that the Ministry for the Status of Women be financially and substantively strengthened, in particular with qualified legal personnel to receive and process allegations of violence against women, and be enabled to send representatives to all nine departments at the community level.

82. The Special Rapporteur calls for increased resources, both human and financial, including gender specialists, to be allocated to the Ombudsman's Office, to ensure representation in all provinces in order to reach out to the entire population.

83. The Special Rapporteur urges the Ministry for Social Affairs and Labour to redirect some funding towards providing social services for victims of violence, including establishing shelters for battered women in Port-au-Prince and in all the departments in the country.

84. The Special Rapporteur urges that all departments across the country establish at least one detention facility where women detainees can be held in separate quarters from the male prison population, in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners.

## Notes

[1] UNDP, Human Development Report 1999.

[2] Robert Rotberg, Ed., Haiti Renewed: Political and Economic Prospects, World Peace Foundation, 1997, Virginia, p. 2.

[3] Anne Fuller, "Challenging violence: Haitian women unite women's rights and human rights", in Bulletin of the Association of Concerned African Scholars, No. 55/56, Spring/Summer 1999.

[4] Centre Haïtien de Recherches et d'Actions pour la Promotion Féminine, "Violences exercées sur les femmes et les enfants en Haïti", November 1996.

[5] Ibid.

[6] Commission Nationale Verité et Justice, "Si M Pa Rele: 29 septembre 1991-14 octobre 1994", Port-au-Prince, 1996, p. 84.

[7] Claudine, Jacob, "Droit des mineurs et des femmes detenus", MICIVIH, Port-au-Prince, September 1997.

[8] MICIVIH/OAS Press Release CP/94/28, June 1994.

[9] Human Rights Watch/National Coalition for Haitian Refugees, "Rape in Haiti: a weapon of terror, New York, 1994.

[10] Commission Nationale Verité et Justice "Si M Pa Rele; 29 September 1991 - 14 October 1994", Port-au-Prince, 1996, p. 42.

[11] Ibid, p. 40.

[12] Ibid, pp. 40-41.

[13] Ibid.

[14] Ibid., p. 85.

[15] Anne Fuller, 1999 (see note 3).

Annex

SELECTIVE LIST OF PERSONS WITH WHOM THE SPECIAL RAPPORTEUR MET DURING HER VISIT

| | |
|---|---|
| Ms. Geri B. Préval | First Lady |
| Mr. Jacques E. Alexis | Prime Minister |
| Ms. Frédérika Alexis | Wife of the Prime Minister |
| Mr. Fritz Longchamp | Minister for Foreign Affairs |
| Ms. Nonie H. Mathieu | Minister for the Status of Women |
| Mr. Camille Leblanc | Minister of Justice |
| Ms. Marthilde Flambert | Minister for Social Affairs and Labour |
| Mr. Pierre Denizé | Director-General, Haitian National Police |
| Dr. Louis E. Roy | Ombudsman |
| Ms. Grassieux | Director, Fort National Prison |
| Mr. Julian Harston | Special Representative of the Secretary-General, MIPONUH |
| Amb. Colin Granderson | Executive Director, MICIVIH |
| Mr. Oscar Fernandez-Taranco | Resident Coordinator, UNDP Resident Representative |
| Ms. Jacqueline Rips | Gender Specialist, UNDP |

The Special Rapporteur met with members of the United Nations Inter-Agency Group on Gender, including with representatives of MICIVIH, UNFPA, UNICEF, IOM, UNESCO and WHO.

The Special Rapporteur also met with representatives of the following non-governmental organizations and women's groups: FAVILEK, MAPVIV, SOFA, KAYFANM, CRAD (Seksyon Fanm), FANMYOLA, ENFOFANM, CNEH (Seksyon Fanm), Association Droit et Justice, Federation 30 Septembre, Association des Victims du Carrefour-Feuilles, FANMDJANM, Haiti Solidarité International, Centre F. Joseph de Promotion des Droits Humains, Union des Femmes Têtes Ensembles Pour La Vie Meilleure.

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# INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE

## VIOLENCE AGAINST WOMEN

Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1997/44

Addendum

Mission to Pakistan and Afghanistan
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## Introduction

1. At the invitation of the Governments of Pakistan and Afghanistan, the Special Rapporteur on violence against women, its causes and consequences, visited Pakistan and Afghanistan from 1 to 13 September 1999 to study the issue of violence against Afghan women. In Afghanistan, the Special Rapporteur visited Faizabad on 7 September 1999 and Kabul from 9 to 11 September 1999. She had also requested access to Mazar-e-Sharif, but owing to a misunderstanding it was not possible for the visit to take place. In Pakistan, the Special Rapporteur visited Islamabad, Peshawar, Lahore and her assistant also visited Quetta to meet with Afghan refugees on her behalf.

2. The Special Rapporteur would like to express her appreciation of the cooperation and the assistance extended to her by the Government of Pakistan and the authorities in Kabul and Faizabad.

3. The Special Rapporteur is especially grateful for the efficient cooperation and support provided by Mr. Erick de Mul, United Nations Humanitarian Resident/Coordinator for Afghanistan, and his staff in ensuring a substantively and logistically successful visit. The Special Rapporteur would also like to place on record her appreciation of the assistance given to her by the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF) and the World Food Programme (WFP).

4. During her visit to Pakistan, the Special Rapporteur met with the Minister for Foreign Affairs, the Regional Commissioner for Afghan Refugees, North West Frontier Province, the Taliban Ambassador, and the National Human Rights Commission. The Special Rapporteur also met with representatives of women's organizations, international organizations, and United Nations agencies, and took testimonies from individuals.

5. In Faizabad, Afghanistan, the Special Rapporteur had meetings with the Acting Governor of Badakhshan Province, the Representative of the President, Mr. Tarik Amin, non-governmental organizations and individuals. The Special Rapporteur also visited a school, an orphanage and a hospital.

6. The Special Rapporteur, together with the Special Rapporteur on the situation of human rights in Afghanistan, Mr. Kamal Hossain, visited Kabul from 9 to 12 September 1999 and met representatives of the Taliban authorities, members of the press, humanitarian agencies, non-governmental organizations and individuals. The Special Rapporteur visited a few villages, including the village of Dashtak in the Charasiab district of Logar province, where 50 families had returned after more than 20 years in refugee camps in Pakistan. The Taliban authorities also arranged for visits to the Rabia Balkhi hospital, a rural health project for women, a primary school for girls and a camp for internally displaced persons.

7. The Special Rapporteur would like to express her heartfelt thanks to all the women who agreed to tell their very personal stories to her so that she could attempt to understand the suffering which they had endured. The Special Rapporteur would also like to thank the organizations which facilitated meetings with Afghan women survivors of violence.

## I. GENERAL FINDINGS

8. In the area of academic research, writing and discourse, significant information and documentation exists on the historical situation of women in Afghanistan and the violations of their rights during the many years of conflict in the territory (see previous reports of the Special Rapporteur on the situation of human rights in Afghanistan to the Commission on Human Rights and the General Assembly, and of the Secretary-General to the Security Council and the Sub-Commission), therefore this report will not contain a detailed historical analysis for lack of space, but will instead concentrate on the findings of the Special Rapporteur at the time of her visit in September 1999.

9. At the time of the Special Rapporteur's visit the civil war and political instability in Afghanistan continued unabated. The Taliban (a Pashtun dominated conservative Islamic movement) controlled the majority of the country, including Kabul, the capital city. The Taliban movement is seen by many as a product of the conflict that originated in the 1978 socialist coup, the subsequent Soviet invasion, the continued fighting and resistance leaders who failed to unite and form a stable government. In 1997, the Taliban changed the name of the country to the Islamic Emirate of Afghanistan and appointed Mullah Omar as Head of State. There is a six-member ruling council in Kabul, but ultimate authority for Taliban rule is with Mullah Omar and the Taliban's inner shura (council), located in Kandahar. The Northern Alliance headed by President Rabbani and his military commander Ahmad Shah Masood continues to control some territory in the north-east.

10. There is said to be no constitution, rule of law or independent judiciary. The Taliban's Islamic courts and religious police enforce their own interpretation of Islamic law and punishments, often following swift summary trials. The religious police reportedly impose immediate punishment for violations of Taliban edicts. Judicial procedures are said to vary, depending on the region and the local commanders. With no functioning nationwide judicial system, many municipal and provincial authorities rely on their own interpretation of shariah law and traditional tribal codes of justice. Several provincial administrations maintain limited functions, but civil institutions are largely non-existent. The Gender Disparity Index, a composite index based on measurement of female life expectancy, educational attainment and income, ranks Afghanistan in the lowest position of any country in the world (UNDP, Human Development Report 1995).

11. This chapter includes information gathered by the Special Rapporteur during her visit in relation to different types of violence against women; this information is not exhaustive, but is indicative of the situation of Afghan women in Afghanistan and Pakistan.

12. The Taliban authorities reiterated their commitment to the international human rights instruments that Afghanistan has signed. This was confirmed at a meeting with officials of the Taliban Ministry for Foreign Affairs. Afghanistan is a party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, and has signed, but not ratified, the Convention

on the Elimination of All Forms of Discrimination against Women. The Taliban authorities in Afghanistan are therefore not only accountable under customary international law provisions on human rights, but also by the specific clauses in the above conventions relating to the rights of women.

13. The Special Rapporteur found official, widespread and systematic violation of the human rights of women in Taliban controlled areas of Afghanistan. Most countries of the world appear to tolerate some practices that discriminate against women, but in only some countries is discrimination official policy. In Taliban controlled areas of Afghanistan, discrimination against women is officially sanctioned and pervades every aspect of the lives of women. They are subject to grave indignities in the areas of physical security and the rights to education, health, freedom of movement and freedom of association. The Special Rapporteur also heard allegations of the clandestine trafficking of women and of the mistreatment of women from minority communities.

14. As the result of pressure from the international community and the local population, certain minor changes have taken place since 1997. The Taliban Ministry of Education informed the Special Rapporteur that there are now primary schools for girls aged 6 to 10, run by the Ministry of Religious Affairs. However, there was a refusal to state that there would be secondary and tertiary education for women. There was also no explanation why the schools for girls were run by the Ministry of Religious Affairs and not the Ministry of Education. The Special Rapporteur visited one such school located in a mosque where the students were chanting verses from the Koran. The textbooks included sections on very elementary Mathematics and Science, but the illustrations for these books included torpedoes and guns - indicating a certain acceptance of the culture of war even at the primary school level.

15. Another minor change is that women may now work in the health sector. Women doctors and nurses may now work in hospitals catering for women. There is a nursing school for women and some classes are being given to train women doctors. However one wonders how another generation of women doctors can emerge without secondary or tertiary education. The Special Rapporteur was also told of an edict allowing needy widows to work in the social service and health sectors.

16. Despite the official edicts that discriminate against women and the presence of Taliban religious police that monitor compliance with these edicts, there is a diversity of practice in the countryside outside of Kabul. Women in the villages the Special Rapporteur visited did not wear the burqa, working in the fields wearing a shawl. A male relative did not accompany the women and they spoke openly about the need for education for their daughters. In Kabul, home based schools were being run for women in defiance of Taliban edicts. Not one Afghan woman with whom the Special Rapporteur spoke, either in Afghanistan or Pakistan, approved of Taliban policy towards women. They were of the opinion that this was not Islam. Though some women welcomed the semblance of security in the areas controlled by the Taliban, none of the women felt that the discrimination in the Taliban edicts was justified. On the contrary, they were full of complaints and negative anecdotes.

17. The situation of Afghan refugee and internally displaced women deeply concerned the Special Rapporteur. During her visit, there was fighting in the Shomali valley between the

forces of the Taliban and the Rabbani government. The Special Rapporteur was given full access to internally displaced women from the Shomali valley at the compound of the former Russian Embassy in Kabul. She also met recent refugees from the Shomali valley in Peshawar. They spoke of a strategy of war that violates international humanitarian law and practice. The men who lived in the Shomali villages were arrested and taken away to unknown locations. Women and children were separated from the men and put into trucks. They were first taken to Jalalabad, but after some protest they were brought to Kabul. Seventy per cent of the internally displaced at the Russian Embassy compound were women and children. The World Food Programme gave them a corn soya blend (CSB) food substitute and the Taliban provided them with bread for the day. There was no soap, water or other such sanitary facilities and only transport to health institutions in emergency cases. The vast majority of the displaced women were concerned about the whereabouts of their husbands, brothers and sons. In addition, they spoke of all their houses being burnt to the ground and their agricultural lands being destroyed. They could not return to their homes and were forcibly displaced.

18. The Special Rapporteur also visited the area controlled by the Rabbani government in Faizabad. Before her visit, she had received reports that the worst period of violence against women during wartime in Afghanistan was when the Rabbani government controlled Kabul. During her visit, she was shown schools where girls studied up to the university level. She was also shown health facilities for women in the Faizabad hospital. Although the conditions were substandard in terms of infrastructure, there did not appear to be discrimination in the areas of education and health. However, the Special Rapporteur reminded the representatives of the Rabbani government that it was their government that first introduced a very strict rendering of law that denied women their rights. She was reassured that if the Rabbani government were to return to power in Kabul it would ensure that its laws were in conformity with its international obligations, especially the Convention on the Elimination of all Forms of Discrimination against Women.

19. The official, widespread and systematic discrimination against women is made worse by the conditions of poverty and war. As long as the war continues, women will continue to be displaced and in addition many of the justifications for not allowing women rights would remain in place. The Special Rapporteur visited some of the poorer villages around Kabul. She was deeply concerned by what she saw. In one village, health facilities were a five-hour walk from the village. There was only one very small well for the whole village. There were no schools, no jobs and the dryness of the land and war devastation had made the land unsuitable for agriculture. Women eked out an earning from the skills they had learnt when some of them were refugees in Pakistan. The children appeared malnourished and had skin rashes associated with unhealthy living conditions. The conditions of these women and children are unlikely to improve until peace and a minimal level of prosperity return to Afghanistan.

## II. SPECIFIC FINDINGS

### A. Physical security

20. Physical security remains a central concern for women in Afghanistan. The armed conflict still results in a great deal of physical abuse. The worst period for sexual assault was when there was civil war in Kabul. In recent years, security has improved in Kabul and the

Special Rapporteur did not receive any allegations of war-related sexual assault in the Taliban controlled areas. However there appears to be continuous assault and abuse on the front-lines. The Special Rapporteur received several reports of sexual assault and abuse by "Non-Afghan Taliban", especially in the Shomali valley, but was unable to verify the reports because of the situation in the area.

21. In urban areas, particularly in cities such as Kabul, Herat and Mazar, though war-related physical abuse has decreased, the female population is still under threat from the official apparatus dealing with violations of edicts enunciated by the Taliban Ministry for the Propagation of Virtue and the Suppression of Vice. Members of the Ministry assault women who violate these edicts with instruments that look like leather cricket bats. (The religious police allegedly specifically hit women on private parts of the body, for example the breasts, in the knowledge that women are less likely to show the bruising, even to family members.) This is done on the spot without a right to be heard or any due process. Women told the Special Rapporteur many stories of how they had been beaten for allowing their ankles to show, for being without a male relative, for laughing loudly, for wearing the wrong type of burqa, etc. There was also a belief among the women that educated women were singled out for humiliating treatment. The arbitrary nature of these beatings raises serious questions of human rights and goes to the heart of women's physical security and well-being.

22. In addition to arbitrary public beatings on the street, women who violate the Hudood Ordinance with regard to questions of morality, including adultery and fornication, are publicly lashed at the stadium in front of large crowds. These spectacles reportedly take place every Friday. This cruel and inhuman punishment continues to be applied. Officials of the Taliban Ministry of Justice were adamant that these punishments will continue. The ease with which women are punished for adultery and fornication contrasts with the difficulty that women have in proving rape when it occurs. They need the testimony of four witnesses in addition to the normal evidentiary requirements. If they fail to prove rape in a context where sexual intercourse has taken place, they, the victims, may end up being flogged for fornication or adultery. Given that there have been enormous developments in law at both the international and national level to protect women victims of rape, the structure of rape laws in Afghanistan raise serious questions regarding the violation of women's human rights.

## B. Right to education

23. When the Taliban first took control of Kabul, they announced that there would be no schooling for girl children until peace arrived. In recent months, owing to the enormous pressure of the international community and the growing demand from the local population, there are now some schools for girl children between the ages of 6 and 10. The Ministry of Religious Affairs runs these schools. The main component of their studies is the Koran, but there are also textbooks that deal with Mathematics, Science and Social Science at a very elementary level. The Special Rapporteur was told that more primary schools for girls would be opened once the war effort was over.

24. On three occasions, the Special Rapporteur asked officials of the Taliban Ministry of Education whether secondary and tertiary education would be available for girl children. On all three occasions, the officials refused to answer the question. At present, there are no schools

offering secondary or tertiary education for girl children. The only non-primary education available is training for nurses. The Special Rapporteur was told that female doctors were being trained. However, without secondary education that would be a very difficult task.

25. The Taliban's lack of official commitment to educating girl children is a violation of international law and Afghanistan's commitments under the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child. This serious allegation was confirmed by the Special Rapporteur's meeting with Taliban officials. Unless these attitudes and policies change, the Taliban controlled areas of Afghanistan will remain in serious breach of Afghanistan's international obligations.

## C. Right to health

26. The World Health Organization (WHO) has defined health as a "complete state of physical, mental and social well-being". Statistics provided by United Nations organizations indicate that the maternal mortality rate in Afghanistan may be one of the highest in the world. When the Taliban authorities first came to power they banned female health workers and said that if women were to be treated by a male physician, a male relative must accompany them and only the affected part should be exposed. These were edicts of the Ministry for the Propagation of Virtue and the Suppression of Vice. In addition, a ramshackle old hospital was designated as the only hospital for women. It did not have the necessary infrastructure or sanitation. The international community and the local population of women reacted to these edicts and some changes have taken place. There are now women's wards in several hospitals, male physicians can treat women patients and female health workers and nurses are being trained. It is claimed that female doctors are also being trained but without secondary and tertiary education for girls, one wonders how that is possible. Despite these minor changes, women's right to health is seriously affected. They are discriminated against in the services provided - the women's hospital the Special Rapporteur visited (Rabia Balkhi Women's Hospital, Kabul) did not have even the minimum infrastructure, except for an X-ray machine; the limited health resources that do exist are pumped into the male hospitals. Although the hospital visited was clean and well run, the lack of facilities was extremely apparent. In addition, water supply and electricity supply were scant because of the location of the hospital.

27. Another aspect of the right to health that seriously disturbed the Special Rapporteur was the problem of mental health. Physicians for Human Rights in their 1998 report The Taliban's War on Women; Health and Human Rights Crisis in Afghanistan claimed that 94 per cent of the Afghan women they interviewed in Kabul were "depressed". This finding was confirmed by women doctors in Kabul, who felt that the figure may be even higher. The Taliban edicts that confine women to the home, combined with the realities of war, have made living a difficult and depressing survival for women. All the women interviewed were convinced that there was some truth in the Physicians for Human Rights finding. Although this has to be investigated further, the high proportion of mental illness among women in Kabul is of serious concern and should be addressed by the authorities, as well as by the international community.

## D. Right to Employment

28. Taliban edicts ban women from working except in the health and social service sectors. This edict has brought untold hardship to women in Afghanistan. The war has created a large number of widows. The inability of these widows to work has caused enormous social problems. In 1999 the Taliban authorities issued an edict allowing needy widows with no other means of support to seek employment. The Special Rapporteur was told that women could work in the health and social service sectors, but the opportunities in these sectors were extremely limited. Growing destitution is evident among an increasing proportion of urban families. Women have taken to begging on the streets and during her stay in Kabul the Special Rapporteur saw ample evidence of this. In addition, she was told that there had been a dramatic increase in prostitution. Although that allegation could not be verified, owing to the refusal of officials even to contemplate the subject, women living in Kabul told the Special Rapporteur that they had heard of many cases.

29. The denial of education to women comes in a context where in Kabul before the Taliban came to power women were gainfully employed. Women were doctors and engineers and equal partners in the civil service; women professionals played an important part in every aspect of society. The sudden prohibition on women working has made many of them extremely bitter and depressed. There was a feeling among educated women that they had been singled out for oppression by the Taliban and that the Taliban were harshest in their treatment of educated women in Kabul. All the educated women whom the Special Rapporteur met expressed extreme unhappiness at now being confined to the home. They cannot work and even at home they cannot enjoy music or leisure. There is just nothing to do except household chores. The Special Rapporteur is deeply concerned about their future.

## E. Freedom of Movement

30. The most evident right that has been violated for women is freedom of movement. Women are confined to the home. If they leave the house, they must wear a burqa and they must be accompanied by a male relative. They cannot loiter and should have a definite location to go to. The religious police ask all these questions if they choose to question a woman. Women cannot take taxis except with a male relative and they cannot go to hotels and other public places of entertainment. Their personal life is deeply affected, as is their social life. In other countries, solitary confinement is a serious punishment. In Afghanistan, women appear to be subject to similar measures as a matter of course. The high rates of depression indicate the health fall-out of these policies. Non-compliance with these edicts results in being lashed by the religious police with an instrument that looks like a leather cricket bat. In the rural areas, women seemed to flout all these edicts, since there the Taliban writ is applied less effectively. Women were working in the fields in shawls and not in burqas and the Special Rapporteur saw many women walking about unaccompanied by male relatives. In Kabul, however, the edicts are more strictly enforced.

## F. Freedom of Association

31. As a result of their lack of freedom of movement, women are also denied freedom of association. There are no social activities for women, not even religious social activities.

Women have no access to sports or leisure. They have no right to form political or community groupings. There is, fundamentally, no civil society in Afghanistan and women are denied civil or political rights. They cannot associate in large groups or engage in group activities by themselves or with men. The resulting lack of communal solidarity is another reason why women appear to suffer such high rates of mental health problems.

## G. Rights of Minority women

32. The Special Rapporteur heard many stories of discrimination against minority women, including Hazara and Tajik inhabitants of Hazarajat and the Shomali area. Reliable reports were received that individuals were targeted because of their ethnic group and suspected sympathy with the opponents of the Taliban.

33. During the fighting in the Shomali valley, women from ethnic minorities were forcibly deported from the area. They were put into cars, jeeps and trucks and made to leave their homes. The Special Rapporteur met many of these women in the Russian Embassy compound in Kabul, as well as many other women refugees in Peshawar and Quetta. Deportation violates international laws of war and is considered to be both a war crime and a crime against humanity.

34. Reports have been received of the abduction of Hazara girls from villages. Following their abduction, they are said to be forced into marriages with men from Pashtun tribes. In 1998, women were reportedly abducted in Mazar-i-Sharif for forced marriages. Some believed that this practice is officially sanctioned; others were of the opinion that such violations were committed by the "Non-Afghan Talibans" and were contrary to Taliban rules.

## H. Trafficking and Prostitution

35. Allegations of prostitution and trafficking were conveyed to the Special Rapporteur in very hushed tones. It is an extremely taboo subject. In Peshawar, the Rapporteur was told that the camps had been raided a few times and women taken away for prostitution. She was also told about certain streets in Peshawar where prostitution and trafficking took place, and was given information about Afghan women being trafficked to the Middle East. In Kabul, she was also told that there had been an increase in prostitution due to the destitution of widows and that certain houses in Kabul were known for these activities. Since the issue was considered to be so taboo, there was little frank discussion with officials. The humanitarian agencies either did not know about such activities or said that they had heard allegations but had been unable to confirm them. As a result, the Special Rapporteur was unable to verify the nature and extent of these activities.

## I. Ministry for the Propagation of Virtue and the Suppression of Vice

36. The Ministry for the Propagation of Virtue and the Suppression of Vice, which comes under the Ministry of Religious Affairs, is the single most important ministry of the Taliban authorities affecting the lives of women. Though general policy on women flows from the high command, this Department is responsible for many of the edicts that make women's lives in

Afghanistan a misery. The Special Rapporteur is absolutely certain that any future policy towards Afghanistan that is aimed at ensuring minimum compliance with human rights must demand the dismantling of this institution.

37. Harsh punishments are carried out under the sharia law for transgressing social mores, including stoning for adultery. Afghans told the Special Rapporteur that it was the first time in Afghan history that women had been flogged in public, a practice which had always been considered taboo owing to the great respect in which women have been held in Afghan society.

38. The Special Rapporteur received information concerning the arbitrary detention of women in Taliban operated women's prisons. There are reportedly several prisons where hundreds of women are arbitrarily detained in very poor conditions. In Kandahar province, a women's prison in Karez Bazaar is said to hold more than 400 women. In Nezarat Khan prison one women is detained who was allegedly arrested for speaking to a man in the street. The Special Rapporteur was unable to investigate the reports during her visit, however the allegations merit further study in order to gain a comprehensive picture of the situation of Afghan women.

### J. The War and Islam

39. Whenever the Special Rapporteur raised issues with regard to human rights in Afghanistan with Taliban officials, she was given either one of two justifications. The first was the argument that the war must be over before systematic planning of policy can begin. This was said in particular with regard to primary education for girl children. The second justification was that the Taliban edicts were Islam and that human rights did not take into consideration Islamic thought and values. The Special Rapporteur is convinced after her conversations with many Islamic scholars that the Taliban edicts are not Islam but the Taliban's version of Islam. Not one other Islamic country has issued edicts such as those of the Taliban relating to the education and health of women. This proves that Islam does not oppose the rights of women. Many Islamic scholars have shown how Islam actually enhances human rights and that edicts such as those of the Taliban are not in the spirit of the Koran. The Special Rapporteur on human rights in Afghanistan, who is a Muslim and who went on the joint mission with the Special Rapporteur on violence against women, entered into a dialogue with the Taliban and argued forcefully and convincingly that Islam has many schools and that human rights are extremely compatible with a humanist view of Islam.

## III. AFGHAN REFUGEES IN PAKISTAN

40. Afghans constitute the largest refugee population in the world, with over 3 million people scattered around the globe. The sheer numbers of Afghans who have sought refuge abroad - an estimated 1.4 million in Iran and 1.2 million in Pakistan - as well as a large internally displaced population which is continually on the move to avoid the conflict, speaks volumes of the tragedy affecting Afghanistan. The combination of conflict and extreme repression has forced families to abandon their homes. Afghanistan's neighbours have shown varying levels of support for refugees over the years. It is alleged by some that their lack of neutrality has prevented them from properly addressing the refugee crisis, which has resulted in the forced repatriation of refugees as was seen earlier this year with mass forced repatriation of refugees, from Iran.

41. Although not a signatory to the 1951 Convention relating to the Status of Refugees or the 1967 Protocol thereto, the Government of Pakistan accepted all Afghans fleeing the Soviet invasion prima facie as refugees. This position was formalized in the Handbook on Afghan Refugees Management issued by the Government of Pakistan in 1981. The Handbook explicitly states that Afghan nationals are granted temporary asylum on humanitarian grounds, as well as for reasons of cultural, ethnic and religious affinity between the two countries. The asylum policy in theory allows Afghan refugees free movement and access to gainful employment. However, the deterioration of the economy in Pakistan and the rise in unemployment in recent years has created a hostile environment for the Afghan refugee community. There has been a crescendo of demands, mostly from the business sections of the population for all Afghans to be repatriated.

42. Estimates of the Afghan refugee population in Pakistan include only those residing in refugee villages; unregistered Afghans living outside the refugee villages are excluded from all Pakistan statistics. This is deceptive as the majority of new arrivals are said to have migrated to the cities. The refugees in Quetta city and Peshawar are currently receiving almost no humanitarian, health, education or income generation assistance. UNHCR should be given the necessary resources to document the new arrivals and assist all refugees, regardless of whether they are in the refugee villages or the cities. The majority of new arrivals are Hazara and Tajik. The ethnic minorities tend to migrate towards the cities rather than the refugee villages, because the latter are mainly dominated by Pastun and Taliban influences. At the time of the Special Rapporteur's visit the weather was turning colder and more refugee flows to Quetta city where expected from Bamiyan.

43. The Guardians, an Afghan non-governmental organization established in 1993, and an implementing partner in the Afghanistan PEACE initiative, had been providing UNHCR with emergency assistance for refugee arrivals from Bamyan Hazarajat, in Quetta city.

44. The Special Rapporteur is concerned about the rise in violence against women among the refugee population, including child abuse, prostitution and trafficking. A local newspaper in Peshawar reported that two Afghan girls were being sold by their parents to Arab men when they were arrested at the airport. Trafficking in women and girls is thought to be on the increase. Further, prostitution of Afghan refugee women and children is also growing, because of the lack of economic opportunities. Such are the numbers of Afghan women involved in prostitution that Afghan women are frequently harassed by Pakistanis calling them "prostitutes".

45. The case of N (aged 12) is an example of the current vulnerability of girl children and the need for a safe house for survivors of violence. When N's mother married a mujahadeen commander, after her natural father's death, N went to stay with her grandmother. She was approached by a beggar woman who took her to Pakistan. N worked for her for two months in prostitution, after which she was sold to a Punjabi man. She managed to escape, but is still in a vulnerable position without a family to look after her. The local Afghan community who are sympathetic to her situation are too afraid to take her into their homes for fear that her involvement in prostitution will bring stigma and shame on their family. Women's organizations stressed to the Special Rapporteur the need for a safe house for such cases. Human rights workers are under threat themselves and feel that the United Nations should take responsibility for setting up a shelter.

46. Domestic violence, incest and honour killings are reportedly commonplace in the refugee camps. As the situation has become more tense with increased unemployment, the number of fatalities in domestic disputes has increased.

47. Responsibility for Afghan refugees in Pakistan is shared between the Government of Pakistan and UNHCR; each region of Pakistan has a Regional Commissioner for Refugees appointed by the Government. New arrivals receive individual assistance, food and shelter; thereafter, the programme is community based including education, health care and services. Health care, education and water is provided by non-governmental implementing partners who are required to report on women and child rights.

Akora Khattak refugee village, Peshawar, North West Frontier Province

48. UNHCR arranged for the Special Rapporteur to visit Akora Khattak refugee village, in North West Frontier Province. The refugee village was created in February 1997 and has a population of approximately 2,812 families, belonging to a mixture of ethnic groups. The refugees are from Parwan, Kabul, Mazar-i-Sharif and other northern provinces. At the time of her visit there were new arrivals from the Shomali valley. Female and male animators (Afghan social workers) are chosen from the refugee population to work with the District Co-ordinator to facilitate the needs of the refugees in the camp.

49. The Special Rapporteur noticed that the camp population were clearly afraid and suspicious of some of the Pakistani authorities. They approached the Special Rapporteur and her assistants and said they could not speak freely if Pakistani UNHCR officials and the Pakistani camp security staff were present. The Special Rapporteur recommends that UNHCR employ Afghan staff to work with the refugees as social trainers and translators, so the camp population will be able to approach them without concern for their security.

50. The Special Rapporteur is very concerned that all refugees complained of a grave shortage of food, which is the most basic of requirements. The foodstuffs which the refugees normally receive (flour, oil and wheat) had not been delivered for a period of weeks. New arrivals from the Shomali valley, however, were provided with daily portions from the food kitchen of what appeared to be a wholesome mixture of brown rice, lentils and spices.

51. The Special Rapporteur found that the lack of employment for men and women, apart from a few lucky ones, has led to economic desperation, drug addiction and depression amongst the Afghan refugee community. On a positive note, a number of educated women have found work in the camps as teachers and medical staff and have benefited from being the main breadwinner in the family. In fact, the Special Rapporteur noted that a small number of women seem to have empowered themselves and taken control of their lives.

52. Doctors at the Mothers and Children Clinic in the camp, informed the Special Rapporteur that many of the patients they treated suffered from malnutrition, and TB was rampant. The Special Rapporteur was struck by the skin rashes and communicable diseases that seemed apparent in the camp population. The medical staff expressed the need for a 24-hour clinic with better facilities and a greater selection of medicines. The doctors wrote prescriptions, but the patients had to go to the bazaar to buy the medicines as the clinic only stocked vitamins and

pain-killers. The doctors had requested medical supplies from the donors who founded the clinic, but doubted that they would receive the necessary supplies, because of donor fatigue. The clinic lacked the necessary medical facilities and instruments. The Special Rapporteur was later informed by UNHCR that an emergency 24-hour clinic was planned for September 1999. More resources are desperately needed for health services. Given the numbers of new arrivals in the cities, the introduction of mobile health units should be considered in order to provide the most basic health care to all refugees.

53. The Special Rapporteur was struck by the extremely poor choice of location for the refugee village, in terms of the distance to the nearest settlement and, particularly, the infertile and arid land. The Government of Pakistan had clearly chosen the least productive and desirable land to accommodate the refugees. Unfortunately, this has made the refugees completely dependent on humanitarian aid, since they cannot grow their own vegetables or trade in a local town.

The Saranan refugee village, Quetta, Baluchistan

54. The Saranan refugee village, established in 1989, is situated 106 km from Quetta and accommodates 3,100 families. Violence against women and girls is of growing concern in this refugee village. The Special Rapporteur received information about the case of a 14-year-old girl who was raped and went to the bazaar for an abortion. Sexual abuse is said to be a particular problem in Surkhab, G. Minera and Pir Alizi refugee villages.

55. According to UNHCR statistics, there are 4 female committees, 2 girls schools (up to grade 5), 2 mixed schools, 12 girls home based schools, 7 non-formal education centres (adult literacy) and 4 groups that guarantee lending (12 women in each) in the camp.

56. In 1995, UNHCR started a community development programme, which was partly financed through a fee collection system. In 1997, a female committees pilot project commenced. Refugees receive training in agriculture and community health work, including reproductive health.

57. Three years ago home based schools were started in the refugee villages, providing education for girls up to grade 5. The Special Rapporteur's assistant visited a home based school where 16 girls were studying (grade 3) Pashto, Mathematics, drawing and the Koran for three hours, five days a week. Families who allow their girl children to go to school receive 5 kg of edible oil every two months as an incentive. There is also a non-formal education centre for adults.

58. The group guarantee lending programme provides loans to women which they pay back in four instalments. At the time of the visit, 48 women were receiving loans in the Saranan village. The women use the loans to continue with their particular trade, be it spinning wool, making carpets or working as tailors.

59. A UNHCR human rights programme was scheduled to start at the end of October 1999, initially for health staff and schoolteachers. In the second phase human rights training is planned for home based school teachers and tribal leaders.

60. Rather than living in the refugee camps which spread out into the desert along the border with Afghanistan, the majority of new refugees arriving in Quetta remain in the city, where the resident Hazara population tries to assist them to survive. A group of new arrivals from Bamyan testified that they had left their homes three months earlier and had lived in the mountains for two and a half months before travelling to Quetta when the weather started to deteriorate in the mountains. They had lost children along the way and the children who had survived looked severely malnourished and in need of special medical attention. The refugees testified that they had left their homes and escaped into the mountains because of the fighting. Survivors' testimonies consistently indicate that the Taliban burnt their houses, men were arrested and killed, and women were taken away and their whereabouts remain unknown.

61. Humanitarian aid agencies are providing primary education, but secondary and higher education are desperately needed. The female Afghan University in Peshawar was closed after being open only for a few months. This is particularly disappointing as Pakistan does not have university places for Afghans. Concern is growing about the consequences for the future of Afghanistan of an uneducated generation, and about the lack of intellectuals, doctors and other professionals. The educated Afghan elite in exile are attempting to provide an education for the next generation. For example, there is an Afghan run school for 600 girls (1-11 grades) in Quetta city, funded by Oxfam (United Kingdom) and a Swiss donor. At the time of the Special Rapporteur's visit five university lecturers from Mazar and Kabul were planning to open an Institute of Science. 35 boys and 6 girls had indicated their interest. Approximately US$ 500 per month was required to get the initiative off the ground, as the lecturers were willing to work without payment. The Special Rapporteur would encourage international organizations to provide funds for the recruitment of teachers, for the expansion of facilities to accommodate more students and for the purchase of necessary school materials.

62. At the fifth meeting of the Afghanistan Support Group, held on 21 and 22 June 1999 in Stockholm, UNHCR emphasized the difficulties it was encountering in fulfilling its mandate in the light of the prevailing security restrictions on international staff and the severe funding shortfall it was facing for the largest refugee population in the world. (In 1999, UNHCR Pakistan has had to provide a minimum level of services for more than a million refugees on an annual budget of US$ 7.8 million.) Particular attention was drawn to the needs of returning refugees belonging to minority groups, such as Tajiks, Uzbeks, Turkmens and Hazaras. Initiatives to support innovative programmes addressing the needs of women were welcomed. It was noted that providing support to returnee and resident communities could contribute to confidence and peace-building at the local level. The meeting noted that while it was incumbent upon the Governments hosting refugees to ensure their protection, the support of UNHCR to reinforce and monitor the protection regime was of the utmost importance.

63. Although the years of conflict have discouraged many refugees from returning to their country, some are willing to return. UNHCR initiated a group repatriation programme for Afghan refugees in Pakistan in September 1997. In 1998, 18,000 returned, and in 1999, 15,000. The group repatriation programme had to be suspended at the end of 1998, for lack of funds. UNHCR received a donation at the end of the summer of 1999, with the winter approaching, however, it will not be possible to recommence repatriation until the spring of 2000.

64. The objective of the group repatriation programme is to implement better targeted assistance projects inside Afghanistan which will ensure the refugees' successful reintegration and sustained return. A main component of this approach is to maintain the link between those who have been repatriated and the rest of the community still residing in Pakistan, the aim being that refugees who have stayed behind may be convinced to repatriate.

65. Non-governmental organizations have alleged that UNHCR is pushing repatriation, even over returnees' security. The Special Rapporteur was concerned, but unable to verify the allegation. Many refugees will not consider returning until their girl children can go to school and the women can work.

66. UNHCR have a "women at risk resettlement programme" aimed at providing assistance to those at extreme risk. The programme is specifically for women activists affiliated to political organizations and opposed to Taliban policies who face serious threats to their lives, and women who, owing to their particular profile, have been rejected by their own refugee community, for example women heads of households. UNHCR told the Special Rapporteur that the initiative is proving difficult to implement as suddenly everyone is claiming that they fit the necessary criteria.

67. Non-governmental organizations have criticized the interpretation of the criteria as being too strict. Each woman must prove why she is individually at risk. They are concerned that vulnerability because of the combination of the Taliban's ethnic and gender persecution and economic vulnerability because of the lack of professional and educational abilities for women are not viewed as adequate risk factors.

68. Resettlement countries have responded positively to the programme. However the often lengthy resettlement procedure needs to be adapted to the urgent need for protection of the women at risk.

## IV. HUMAN RIGHTS DEFENDERS AND NON-GOVERNMENTAL ORGANIZATIONS

69. Human rights defenders in Afghanistan and Pakistan continue to receive death threats and to be subjected to harassment in relation to their work to raise awareness about human rights and the plight of the Afghan people. The majority of Afghan non-governmental organizations are now based in Pakistan as it gradually became impossible to work in Afghanistan under the extremely repressive circumstances that appear to exist there.

70. In Pakistan, human rights defenders reportedly do not receive protection from the local authorities and are at risk because of their activities in support of peace and human rights in Afghanistan. The Taliban have allegedly been quoted as saying that their country's laws are applicable to Afghans irrespective of where they live. The Pakistani authorities do not seem to have effective or adequate measures in place to protect Afghan human rights defenders, nor do they investigate past attacks. The Special Rapporteur recommends that the Government of Pakistan urgently provide efficient and adequate protection and ensure that Afghans in Pakistan do not become the target of death threats or assassination attempts. Furthermore, the Pakistani police are accused of regularly stopping Afghan refugees for extortion purposes.

71. Non-governmental organizations are concerned about what they call the "Talibanization" of Pakistan. The participation of young Pakistani boys in the Taliban effort and the setting up of ideologically similar groups in Pakistan has raised concern about the effect of these changes on the women of Pakistan. All the women's groups in Pakistan with which the Special Rapporteur met expressed this concern.

72. As the situation deteriorates, Afghan human rights defenders based in Pakistan are leaving for Europe and the United States of America, because of direct intimidation, pressure and the lack of options for their children. This brain drain has devastatingly weakened civil society, making it increasingly difficult to monitor the human rights situation adequately. Nevertheless, a number of Afghan non-governmental organizations are still courageously working to bring the Afghan people's plight to the attention of the international community. The Special Rapporteur met representatives of various Afghan non-governmental organizations, all of whom were extremely dedicated to their work. The following are just some examples.

73. The Cooperation Centre for Afghanistan (CCA) an Afghan non-governmental organization based in Peshawar, monitors and documents the human rights situation from several offices within Afghanistan and holds seminars on human rights issues, including a course on "Women's rights, gender awareness and Islam". The Special Rapporteur strongly supports the work of this organization and calls on the international community to support it.

74. One important initiative of the Afghan Women's Network (AWN) is its collection of cases of violence against women as refugees and war victims. It has published material in Dari and English to let the world know about the reality of life for Afghan women and has documented a host of common problems such as the lack of basic education, health care, security, employment, skills, shelter, legal identity and legal access.

75. The Revolutionary Afghan Women's Association (RAWA), with an estimated 2,000 members in Afghanistan and Pakistan, advocates that women should play a full role in the political life of Afghanistan and have the same access as men to education and employment. RAWA works on women's rights issues and with survivors of violence.

76. The Afghan Women's Council (AWC) is a non-governmental organization which works to secure the civil and social rights of women based on Islamic principles and the culture and traditions of Afghanistan. It publishes a monthly paper Zan-e-Afghan with the aim of mobilizing Afghan women to seek peace and stability, and of uniting women to defend their rights.

77. The majority of the international organizations working in Afghanistan focus on the provision of humanitarian assistance in the areas of rehabilitation, health, education and agriculture. A number of them, including the Swedish Committee for Afghanistan, are involved in the provision of alternatives to formal education for girls. They are working in various regions and they hold that certain local authorities are easier to work with than others, allowing an opportunity for dialogue and negotiation in regard to permission and authorization. According to their estimates, 20 per cent of the 136,000 students currently receiving education are girls.

## V. UNITED NATIONS SYSTEM AND THE INTERNATIONAL COMMUNITY

78. The international community has been faced with many dilemmas in seeking to provide assistance to the Afghan people in a difficult political and human rights context. Its attempts to engage in dialogue in the hope that policies that are consistent with international norms can be negotiated have been further complicated by a movement which contains some who are willing to negotiate and others who are defensive about what they perceive to be the threat from the West to Afghanistan's religious tradition and, particularly, about the erosion and undermining of indigenous culture. The international community is faced with the problem of how to report on human rights abuses of greater or lesser severity on the one hand and to negotiate access to the population to meet humanitarian needs on the other. The potential to reduce human rights abuses through negotiations relating to programme concerns must be balanced with the possibility that through the provision of resources and assistance the international community is potentially condoning the abuses by providing assistance despite human rights concerns.

79. The Special Rapporteur was appraised of the Strategic Framework for Afghanistan to strengthen the effectiveness of the international presence by ensuring that agencies providing assistance work together. The Strategic Framework comprises a political strategy and arrangements for Principled Common Programming designed to help ensure that the strategies and approaches pursued do not contribute, however inadvertently or indirectly, to the suffering of Afghans and maximize the protection and well-being of endangered communities. The United Nations gender focal point planned to capitalize on the existing common programming structure to ensure a higher degree of responsiveness to gender related issues in joint United Nations programming initiatives.

80. The United Nations and its partners have adopted a dual approach in its work in Afghanistan as part of the Strategic Framework process. With regard to humanitarian assistance, a non-confrontational approach, although time consuming, is considered the best strategy. With regard to other issues, the policy makers appeared to be divided. One school of thought, favoured by many United Nations agencies and the gender focal point is that the United Nations should enter into a dialogue with the Taliban authorities and work towards incremental change with minimum confrontation. Other policy makers were of the belief that the United Nations would compromise its principles if it were officially to tolerate the Taliban practices while implementing projects. From a human rights perspective, the Special Rapporteur is of the belief that certain Taliban policies fundamentally compromise the human rights of women and that rights based programming is necessary for the United Nations system to respond effectively to human rights violations. Certain of her interlocutors expressed concern that confrontational statements by foreign organizations would worsen their situation by angering local authorities and producing stricter conditions. However, United Nations complicity in the violation of the rights of Afghan women is also a serious matter. The Special Rapporteur is of the belief that humanitarian assistance requires a different approach, that of constructive engagement in human rights issues. The hardships suffered by the Afghan people require this type of effort.

81. The Special Rapporteur had an interesting discussion with UNICEF about how education has become a problematic issue. When the Taliban closed formal schools in Herat, UNICEF decided not to support formal education until all children could be educated. However, it does support, with both material and technical assistance, non-governmental organizations providing

education at the primary level for approximately 350,000 children in home based schools. In response to the principled position of the United Nations system on equality of access for males and females to education, certain of the Special Rapporteur's interlocutors were of the opinion that Afghan education should start for whoever can receive it, on the basis that it is better to educate only the boys rather than neither the boys nor the girls: "if one does not educate boys, as uneducated men they will be the worst enemies of their sisters and mothers". UNICEF explained that it did not want to institutionalize a parallel system of more complete formal education for boys and limited home based education for girls: it would provide equal education for boys and girls or none at all. The Special Rapporteur commends UNICEF for its principled stand on women's rights as an integral part of the United Nations efforts.

82. Human rights programming was introduced at the beginning of 1999 with the aim of integrating human rights into all assistance activities. It focuses attention on the structural inequalities that contribute to poverty, social exclusion and marginalization. The United Nations approach to human rights in Afghanistan is to address immediate life-saving and life-sustaining needs while simultaneously pursuing measures focused on strategic long-term objectives, namely bringing about conditions essential for the enjoyment and protection of human rights.

83. At the fifth meeting of the Afghanistan Support Group, held on 21 and 22 June 1999 in Stockholm, the participants expressed the view that the needs of the Afghan people justified a sustained commitment to humanitarian assistance, including assistance in addressing the human rights deficit of children and women, in particular female-headed households. The meeting addressed the human rights based programming which aims to advance human rights through assistance activities. The participants welcomed the many examples of constructive local-level cooperation and commitment, and emphasized the opportunities for constructive engagement at the community level.

84. In this connection, the Special Rapporteur was appraised of a successful initiative undertaken by the United Nations Centre for Human Settlements (Habitat), namely, the Community Forum project which was started in 1995. The community forums are sustainable multi-functional programmes that provide economic, educational and social benefits to women and men. The profit-sharing processes cover its operating costs and provides services and employment opportunities for women in the communities. The community forums develop self-reliance and self-help capabilities. The Special Rapporteur encourages donors to consider funding such projects, as it seems to be the most direct way of ensuring capacity-building and sustainability.

85. The Special Rapporteur encourages all United Nations agencies to recruit more female international staff to ensure interaction with both Afghan women and men, as male international staff can only meet with male members of the Afghan community and women's participation is thus excluded. The current United Nations ban on nationals of the United Kingdom and of the United States working in Afghanistan has prevented many well-qualified women from travelling to the country. The Special Rapporteur recommends that the United Nations consider lifting the ban on United Nations staff of United Kingdom or United States nationality as soon as the security situation permits.

86. Lastly, "donor fatigue" is creating major difficulties for all United Nations agencies trying to operate in Pakistan and Afghanistan with diminishing funds. Ten years ago considerable funds were received for projects in Afghanistan. In the past two or three years there has been a drop-off in donations. The Afghan conflict has become less of a priority, in the light of more recent conflicts, such as that in Kosovo. However, the increased humanitarian needs arising from the intensification of the Afghan conflict, particularly in the second half of 1999, have confirmed the importance of the United Nations agencies and the assistance community providing a minimum safety net for the most vulnerable.

## VI. RECOMMENDATIONS

87. The Taliban administration should not be given international recognition unless and until it is ready to meet its international obligations with regard to the rights of women. The gross and systematic violation of the rights of women demands firm and consistent international action based on humanitarian intervention. International action should be considered that would compel the Taliban Government to respect a minimum core of women's human rights.

88. The international community must halt the flow of arms into Afghanistan in order to prevent the relentless fighting in the country. The United Nations should impose strict and serious sanctions on countries which continue to support the Taliban and their rivals with arms and money. An international arms embargo should be strictly enforced.

89. Humanitarian aid to all parts of Afghanistan and to the refugees in Pakistan should be increased. The humanitarian crisis in Afghanistan makes the Afghan population one of the most vulnerable in the world. It is important that there be a sustained effort to assist the refugees, the majority of whom are women and children. Such assistance should include: the provision of shelter for women victims of violence, increased food supply, better medical services and health care for all refugees and the provision of primary, secondary and tertiary schooling for all Afghan children. The aid community should take all possible measures to meet what is without doubt one of the world's greatest humanitarian disasters.

90. The provision of non-humanitarian aid to the Taliban controlled areas should cease unless the aid can be delivered without discriminating against women. International standards with regard to the rights of women cannot be compromised for policies of "constructive engagement". Aid agencies must be absolutely convinced that their actions are not consolidating or worsening discrimination against women.

91. The Taliban authorities in Afghanistan and the Rabbani government in Afghanistan should abide by all instruments of international human rights law, including the Convention on the Elimination of All Forms of Discrimination against Women and the Geneva Conventions with regard to the conduct of warfare.

92. All Afghan parties, and in particular the Taliban, should bring to an end without delay all violations of the human rights of women and girls and take urgent measures to ensure: the repeal of all legislative and other measures which discriminate against women; the effective participation of women in civil, cultural, economic, political and social life throughout the country; respect for the right of women to work, and the reintegration of women in their

employment, respect for the right of women and girls to education without discrimination, the reopening of schools and the admission of women and girls to all levels of education, respect for women's right to security of person and that those responsible for physical attacks on women are brought to justice, freedom of movement for women, and their effective and equal access to facilities necessary to protect their right to the highest attainable standard of physical and mental health.

93. Peace and security must be returned to Afghanistan. If the general situation does not improve, the Afghan people will not be able to break away from the pattern of human rights violations which has plagued the territory for decades. All parties must pursue the basic goal of ending the military conflict and establish, through peaceful political negotiations, a broad-based, multi-ethnic and fully representative government which would respect internationally recognized human rights and abandon all policies which are inconsistent with the international human rights instruments to which Afghanistan is a party.

94. Women must be involved in the political and peace process. It is imperative that emerging attitudes within the Afghan community that demand education and health care (especially in the case of returnees from Iran, Pakistan and Europe) are built upon. Afghan women should be empowered to help themselves. Through the provision of training to improve their capacities, they should be assisted to articulate their needs in an international setting, to structure their organizations, and to develop leadership skills and technical knowledge.

95. The Special Rapporteur urges all United Nations agencies working in Afghanistan and Pakistan to initiate and fund programmes targeted at the psychological and social rehabilitation of women.

96. The United Nations and other international organizations should employ more female international staff, in order to have access to both Afghan men and women.

97. International organizations should also employ educated Afghan women for their projects, where possible.

98. The United Nations should lift its travel ban on nationals of the United Kingdom and the United States as soon as the security situation permits. The agreement of the Governments of the United Kingdom and the United States should not be a prerequisite for lifting the ban. When individuals join the United Nations they must be recognized as international civil servants and not as nationals of particular countries.

Annex

SELECTIVE LIST OF PERSONS/ORGANIZATIONS WITH WHOM THE SPECIAL RAPPORTEUR MET DURING HER MISSION

PAKISTAN

Minister for Foreign Affairs

Regional Commissioner for Afghan Refugees, North West Frontier Province

Taliban Ambassador, Islamabad

United Nations Coordinator for Afghanistan

Office of the United Nations High Commissioner for Human Rights

Office of the United Nations Coordinator for Afghanistan

United Nations Special Mission to Afghanistan (UNSMA)

United Nations Children's Fund (UNICEF)

United Nations Centre for Human Settlements (Habitat)

Office of the Coordinator of Humanitarian Assistance to Afghanistan

United Nations Development Programme

United Nations Population Fund (UNFPA)

World Food Programme (WFP)

Agency Coordinating Body for Afghan Relief (ACBAR)

Swedish Committee for Afghanistan (SCA)

Oxfam

Afghan Women's Network

Afghan Women Council

Comprehensive Disabled Afghan's Program

CARE

Revolutionary Afghan Women's Association (RAWA)

Save the Children Fund US

Save the Children Fund UK

GAA

Shuhada Organization

Mercy Corps International

Guardians

Cooperation Centre for Afghanistan (CCA)

Women's Action Forum, Human Rights Commission of Pakistan

AFGHANISTAN

In Faizabad

Acting Governor of Badakhshan province

The representative of President Rabbini

In Kabul

Deputy Minister of Justice

Deputy Minister of Health

Deputy Minister for Education

Head of International Organization Department of the Ministry for Foreign Affairs

Office for the Coordination of Humanitarian Affairs (OCHA)

International Committee of the Red Cross

World Food Programme

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